# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEB HENSON,	)	
Plaint	tiff,	
Vs.	)	
JOSEPH SHELFO, an individual d/b/a Peppe's Villa Capri;	) ) )	
PENTHOUSE, INC., an Oklahoma corporation, d/b/a Beaumont's Bistro;	) No. 78-C-52-C 78-C-191-C (Consolidated)	
THE FOUNTAINS CLUB, INC., an Oklahoma corporation, d/b/a The Fountains Restaurant, and;	)	
THREE FOUNTAINS, INC., an Oklah corporation, d/b/a The Fountain Restaurant,	noma ) FIL E. 2	
Defend	) SEP 30 <b>1981</b>	
	Jack C. Silver, Clar	k

An order having been made on January 7, 1981, directing that plaintiff have judgment against defendants for an attorney's fee in a reasonable amount and directing that plaintiff's counsel submit an affidavit to determine the reasonableness of said fee, and a hearing having been had before me on the 22nd day of September, 1981, plaintiff appearing by and through her attorney, and defendants appearing by and through their attorneys, and the Court having heard the testimony and examined the proofs offered by the respective parties, and being fully

JUDGMENT

U. S. DISTRICT COURT

1. The services of plaintiff's attorney in connection with the action herein and the incidental work resulting therefrom are reasonably worth \$11,091.00, computed and allocated as follows:

advised in the premises, finds as follows:

a. In connection with the action against

defendants, The Fountains Club, Inc. and Three Fountains, Inc., 77.73 hours at the rate of \$60.00 per hour and 3.33 hours at the rate of \$70.00 per hour for a total sum of \$4,897.00.

- b. In connection with the action against defendant, Penthouse, Inc., 50.73 hours at the rate of \$60.00 per hour and 3.33 hours at the rate of \$70.00 per hour for a total sum of \$3,277.00.
- c. In connection with the action against defendant, Joseph Shelfo, 44.73 hours at the rate of \$60.00 per hour and 3.33 hours at the rate of \$70.00 per hour for a total sum of \$2,917.00.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in favor of plaintiff, Deb Henson, and against the defendants, Three Fountains, Inc., d/b/a The Fountains Restaurant, and the Fountains Club, Inc., d/b/a The Fountains Restaurant, jointly for attorney's fees in the amount of \$4,897.00; in favor of the plaintiff, Deb Henson, and against the defendant, Penthouse, Inc., d/b/a Beaumont's Bistro, for attorney's fees in the amount of \$3,277.00; in favor of plaintiff, Deb Henson, and against the defendant, Joseph Shelfo, d/b/a Peppe's Villa Capri, for attorneys fees in the amount of \$2,917.00.

It is so Ordered this 22nd day of September, 1981.

(Signed) H. Dale Cook

H. DALE COOK Chief Judge, U.S. District Court

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

berendant.	)	•			SE	<b>P</b> 3(	0 198	И
RICHARD S. SCHWEIKER, JR., Secretary of Health and Human Services,  Defendant.	)			[=	Į	ļa L		
vs.	)	No.	80-0	C-59	7-E			
Plaintiff,	)							
VERN W. MAKINSON,	)							

ORDER

Didd. ... T

Plaintiff brings this action pursuant to 42 U.S.C. § 405(g) for judicial review of the Defendant's final administrative decision denying Plaintiff's application for disability benefits.

Although there is no formal motion for remand before the Court, claintiff, in his opening brief, asks as an alternative to reversal of the Secretary's decision that the Court remand this case for the purpose of allowing Plaintiff to produce additional evidence to support the diagnosis of Dr. Pillow that Plaintiff suffered from probable carpal tunnel syndrome (Tr. 332).

42 U.S.C. § 405(g) provides that in order for a remand to be granted, Plaintiff must show "good cause." Bradley v. Califano, 573 F.2d 28 (Tenth Cir. 1978); Bohms v. Gardner, 381 F.2d 283 (Eighth Cir. 1967), cert. denied, 390 U.S. 964, 88 S.Ct. 1069, 19 L.Ed.2d 1164 (1968); Long v. Richardson, 334 F. Supp. 305 (W.D. Va. 1971); Dunn v. Richardson, 325 F.Supp. 337 (W.D. Mo. 1971); see Hope v. Secretary of Health, Education and Welfare, 347 F.Supp. 1048 (E.D. Tex. 1972). In determining whether good cause for a remand to the Secretary exists, it must be remembered that the Social Security Act is to be liberally construed as an aid to the achievement of its Congressional purposes and objectives and that narrow technicalities which thwart its purposes are not to be adopted. Schroeder v. Hobby, 222 F.2d 713 (Tenth Cir. 1955). In these circumstances, courts must not require such a technical showing of good cause as would justify the vacation of a judgment or the granting of a new trial. Wesley v. Secretary of Health, Education and Welfare, 385 F.Supp. 863 (D. D.C. 1974); <u>Epperly v. Richardson</u>, 349 F.Supp. 56

(W.D. Va. 1972); Martin v. Richardson, 325 F.Supp. 686 (W.D. Va. 1971); Sage v. Celebrezze, 246 F.Supp. 285 (W.D. Va. 1965); Blanscet v. Ribicoff, 201 F.Supp. 257 (W.D. Ark. 1962). Remand should be granted where no party will be prejudiced by the acceptance of additional evidence and the evidence bears on the matter in dispute. Epperly v. Richardson, supra; Martin v. Richardson, supra; Sage v. Celebrezze, supra; Blanscet v. Ribicoff, supra.

In the instant case, the Court has reviewed the administrative record, and has noted Plaintiff's argument that all of his various medical problems, in conjunction, render him disabled to work. Proof that the Plaintiff suffers from carpal tunnel syndrome may affect the administrative law judge's determination that Plaintiff has the residual functional capacity for light work. It appears that giving Plaintiff the opportunity to present additional evidence as to that condition will not work to prejudice either party, but will, in fact, promote finality in that evidence as to all of Plaintiff's claimed impairments may be presented and considered in one proceeding.

Accordingly, the Court finds and concludes that in the interest of justice this matter should be remanded to the Secretary for the taking of additional evidence as stated herein. The Clerk of the Court is, therefore, directed to effect the remand of this case.

It is so Ordered this 301- day of Seylonder, 1981.

STATES DISTRICT JUDGE

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, and K. SCOTT SALLEE, REVENUE AGENT, INTERNAL REVENUE SERVICE,	) ) )	[=	. [	_	E	D
Petitioners,	)		SE	<b>P</b> 30	1981	}
V.	NO. 81-C-357-E		:			
STIFEL, NICOLAUS & CO., INC. and JOHN B. WHEELER, VICE-PRESIDENT,	) ) )	i		*	1	<b>!</b>
Respondents.	) )					

### ORDER OF DISMISSAL

Upon application of the United States of America, the records so summoned have been received by the United States of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this case be dismissed.

Dated this 30. of September, 1981.

UNITED STATES DISTRICT JUDGE

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

0. r		A COMPANIES OF A
Defendant.	)	SEP 3 0 1981
UNITED STATES OF AMERICA,	)	050.00.000
vs.	) No. 80-C-365-E	
Plaintiff,	)	
PATTY PRECISION PRODUCTS COMPANY, a corporation,	)	

ORDER

Plaintiff commenced this action on June 27, 1980, requesting injunctive relief and declaratory judgment on three counts. On January 16, 1981, the Court granted Defendant's motion to dismiss Counts I and II of the Complaint, but denied Defendant's motion for summary judgment as to Count III. The only matter presently before the Court, therefore, is Plaintiff's allegation of constructive debarment from government contracts.

Plaintiff has now moved the Court to dismiss this action without prejudice pursuant to Rule 41(a)(2), Fed.R.Civ.Pro. The Defendant opposes a dismissal without prejudice, arguing that it has expended time and effort in preparing for trial, and has incurred expenses in its preparation, which would be for naught were Plaintiff to later reinstitute this action.

Rule 41(a)(2) provides that the Court may impose such terms and conditions upon this type of dismissal as the Court deems proper. In civil actions, it is, of course, settled that with respect to costs the United States stands in generally the same position as any other litigant, and that the payment of the Defendant's costs is ordinarily a proper condition for a Rule 41(a)(2) dismissal, see, e.g., 28 U.S.C. § 2412; Pine River Logging & Improvement Co. v. United States, 186 U.S. 279, 22 S.Ct. 920 (1902); 5 Moore's Federal Practice ¶ 41.06; 6 Moore's Federal Practice ¶ 54.75[2]; 9 Wright & Miller, Federal Practice and Procedure § 2366.

It is the Court's opinion that Plaintiff should be allowed to dismiss this case without prejudice conditioned upon its payment of the costs incurred by the Defendant.

IT IS THEREFORE ORDERED that this action be dismissed without

prejudice, such dismissal to be contingent upon the Defendant's filing of a statement of costs and the payment of same by Plaintiff.

It is so Ordered this \_\_\_\_\_ day of September, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

AN THE OWNER DOWN NOW DAYS GROWN COUNTRY SHOW

ROKEPERN STRICT OF OKLIBERY

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G. O. G. C Wighten Company of the chip,

Plaintif.

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R. M. CURDS, DELLY IN CONTESS, WILLIAM A. HICKNOWN, OR., HULDA COLLARDS, RUTH SCHELE, DELLOW WHITE, THE COLLAR COLLARDS, L.C., an Oklahoma Colporation, C. e. D. McKilliam and Characac Frams, LvC., on Oklahoma corporation,

Defendants.

JOURNAL ENTRY OF JUDGITCH

Now on this With day of September, 1931, this matter comes on regularly for trial. Plaintiff appears by and through its attorney, C. S. Lowis, III, of Robinson, Boese & Davidson. The defendants R. M. Sowers, Betty Ann Burers, William A. Juedeman, Jr., Hulda Celwick, Ruth Steele, Welen White and Fayne Bishop appear by and through their attorney, ditchell R. Shames. The defendants Freddie K. Saliba and Denni Enterprises, Inc., appear by and through their attorney, Don I. Nelson. The defendants Carl D. McKinney and Charmac Farms, Inc., appear not, no service having been obtained upon them. The Court, having examined and reviewed the pleadings herein, having heard statements of counsel, and being fully advised in the premises, finds as follows:

1. Plaintiff, G. O. G. Investment Group, is a limited partnership duly organized and existing under and by virtue of the laws of the State of California and maintains its principal place of business in the State of California. All of the partners of said partnership are citizens of the State of California. Plaintiff is deemed to be a citizen of the State of California.

- A. T. Juna, Tr., Enda Calwick, Holon White, Pages of slope of Provide K. Calvin and will be of the crase of Oklaha a. The defendant both checks is a citizen of the State of Terms. The defendant both checks is a citizen of the State of Terms. The defendant both checks is a citizen of the State of Terms. The defendant both checks is a citizen of the laws of the State of containing maker of by virtue of the laws of the State of containing maker of the place of the state of which a calculation is principal given of their is in the State of Children. That is do not a citizen of the State of Oklaham.
- 3. The matter in controversy species, such a ive of integrate and costs, the sum of \$10,000.00.
- 4. The defendants R. M. Powers, Bubly Ann Bowers, William A. Juedeman, Jr., Unida C heick, Ruth Stable, Helen White and Fayne Bishop (the "mineral ormer defendants") are the owners of one half (1/2) of the minerals in and to the following described real property situated in Greek County, State of Oklahoma, to wit:

The Northwest Quarter of the Southeast Quarter (837/4 SE/4) of Section 24, Tetrochip 14 North, Range 10 East.

The mineral owner defendants made, executed and entered into an oil and gas lease in May of 1979 with Fueddie K. Saliba cover-ing said property. A true and correct copy of said oil and gas lease is attached to plaintiff's Complaint, marked Exhibit "A".

- 5. Thereafter, Freddie K. Saliba assigned said lease to Challenger Resources, Inc. ("Challenger"), reserving a one-eighth of eight-eighths (1/8 of 8/8) overriding royalty interest. Subsequently Freddie K. Saliba assigned such overriding royalty interest to Denni Enterprises, Inc.
- 6. Thereafter, plaintiff herein obtained judgment in the District Court of Creek County, State of Oklahoma, in Case No. C-80-498 against Challenger, wherein plaintiff was determined by the Court to be the owner of the entire oil and gas leasehold estate, including that portion of said leasehold estate covered by the lease from the mineral owner defendants.

- V. Challeng the pales by common print topon, shilling when the improvement of the transfer president by challenger, cold woll toping been duly completed to the Caliba to. 9 oil well.
- production binner completion and, accordingly, said well concious to bold said to be for the Daniel Daniel of plaintiff.
- 9. Pleistiff is the source of a valid and remaining oil and gas largehold estate our oring the fathering described real property situated in Coack County, State of Oktobers, to wit:

The Northwest Quarter of the Southeast Quarter (YW/4 sd/4) of Section 24, Township 14 North, Proge 10 East;

abject to the following volid royalty and overriding revelty introcests, to wit:

Vame	Interest
R. M. Bowers and Betty Ann Bowers, husband and wife, as joint tenants with right of survivorship	.01562500 royally interest
William A. Juedeman, Jr.	_
of the second of the control of the	.00937500 movalty interest
Hulda Colvick	.00937500 royalty interest
Ruth Steele	.00937500 royalty interest
Helen White	.00937500 royalty interest
Fayne Bishop	.00937500 royalty interest
Freddie K. Saliba	.00000000
Denni Enterprises, Inc.	.09375000 overriding royalty interest

- 10. The parties hereto have filed a Stipulation of Dismissal of plaintiff's claim for a money judgment as set forth in Count I of plaintiff's Complaint.
- Court that the plaintiff, G. O. G. Investment Group, a California limited partnership, be and it is hereby granted judgment against the defendants, and cach of them, decreeing that plaintiff has good and valid title to, and is the owner of, a valid oil and gas leasehold estate covering the following

denote that we have a significant of a dream of adjustice of objections, to write

The Portion of Observer of the Southmont Quarter (18/4 18/1) of the them 24, downship 14 Month, adopt to start;

by, there there is a first one and they are been by employed to a claiming any might, title or into each in and to emid it inchold and what, except to the evient of the royalty and a considing my off the lateral forth.

of is Junious Ordensed, addition And escensed by the Court that the following parties are the comers of valid royalty or overriding royalty into cests as not forth below, in said lease-hold estate, to wit:

Manie	Intoxe	s t	
R. M. Detrers and Belty Ann Powers, husband and wife, as joint tenants with right of survivorship	.01562500	coyalty	intopost
William A. Juedeman, Jr.	.00937500	royalty	interest
Nubla Colwick	.00937500	toyalty	interest
Futh Steele	.00937500	royalty	interest
Molen Phile	.00937500	regally	intercet
Fayne Bishop	.00937500	royalty	interest
Freddie K. Saliba	.00000000		
Denni Enterprises, Inc.	.09375000		ng interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to the Stipulation of Dismissal, plaintiff's claim for a money judgment as set forth in Count I of plaintiff's Complaint is dismissed.

United States District Judge

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WORLDSON, ROUSE & DAVIDSON

Milebell F. Theors
Alle boy for defendants Dec. 8,
Thedeman, Gelwick, Steele,
White & Of Lop

Don I. Retson

Attorney for defendants Freddie

K. Saliba and Donni Entropeius,
Inc.

# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

RAYMOND J. DONOVAN, Secretary of Labor, United States Department of Labor,	) ) )
Plaintiff,	
v.	) Civil Action File
HEAT TRANSFER EQUIPMENT COMPANY AND ANDY LAY,	) No. 81-C-399-B
Defendants.	SEP 30 1981
OPDE	Jack C. Silver, Clerk U. S. DISTRIUT COURT

ORDER

Came on for consideration the Plaintiff's Motion to Dismiss his complaint in the above-entitled and numbered cause. The Court, finding that the inspection pursuant to the inspection warrant was accomplished on September 2, 1981, finds that the Secretary's motion is well taken and should be granted. Therefore, it is,

ORDERED, ADJUDGED and DECREED that the Secretary's Complaint in the above-entitled and numbered cause should be and is hereby dismissed.

Signed and entered this 30 day of 5cpt., 1981.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SOL Case No. 15821

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

	ORDER OF DISMISSAL	u. S. District courf
Defendant.	)	18 19
FAMILY MARKET, INC.,	, )	Zyr Bara-Orana,
VS.	) Case No. 80-C-666-C	
Plaintiff,	) ) )	
GAIL GENSICKE,	)	

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT, that this action by and the same hereby is dismissed with prejudice.

COURT

APPROVED:

by: WILLIAM F. RAYNOLDS, II

Attorney for Plaintiff

Attorney for Defendant

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

28

Santa Allera U. S. DICHTON CONAL

DONALD D. REIMER and GLORIA C. REIMER, husband and wife,

Plaintiffs,

Vs

JEFFERSON J. BAGGETT; B & D TRUCKING INC., a corporation; BEACON TIRE SERVICE NO. 2, INC., a corporation; RYDER TRUCK RENTAL, INC., a Florida corporation; and JAMES A. STEELMAN d/b/a BEACON TIRE SERVICE,

Defendants.

NO. 79-C-47-E

#### ORDER OF DISMISSAL

Upon the application of the Plaintiffs and for good cause shown, this cause of action and complaint is dismissed with prejudice as to the Defendant RYDER TRUCK RENTAL, INC. only and reserving any and all causes of action that Plaintiff may have against any and all of the other Defendants shown in the caption hereof.

Dated this Z8 day of kel, 1981.

### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED S	STATES OF	AMERICA,	)		
	Plain	tiff,	)		
vs.			)	CIVIL NO.	81-C-316-C
NADINE F	OWLKES,		)		
	Defend	dant.	) )		

u. S. District cour

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#### AGREED JUDGMENT

The Court being fully advised and having examined the file herein finds that Defendant, Nadine Fowlkes, was personally served with Summons and Complaint on July 27, 1981.

The parties agree and consent that Judgment may be entered against the Defendant, Nadine Fowlkes, in the amount of \$733.86 (less the sum of \$190.00 which has been paid).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Nadine Fowlkes, for the principal sum of \$733.86 (less the sum of \$190.00 which has been paid), plus the accrued interest of \$133.22 as of March 4, 1980, plus interest at 7% per annum from March 4, 1980 until the date of Judgment, plus interest at the legal rate on the principal sum of \$733.86 from the date of Judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PALLEA S. OGG

Assistant U.S. Attorne

NADINE FOWLKES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

2.8 19 U.S. DISTRICT COURT

SUN OIL COMPANY OF PENNSYLVANIA, Plaintiff, )

V. ) No. 80 C 161 E

PLANT SERVICES, INC., )

#### ORDER

NOW, on this 21 day of September, 1981, upon Joint Application of the parties herein, this case is dismissed with prejudice.

S/ JAMES O. ELLISON

U. S. DISTRICT JUDGE

### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEP 28 1981

U. S. 1931

UNITED STATES OF AMERICA,

Plaintiff,

vs.

19.12 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 78-C-107Bt Tract No. 218, et seq.
80.91 Acres, Washington E. J. Browder, Etc.	Co.,	)	CIVIL ACTION NO. 78-C-112Bt Part of Tract No. 243M
80.00 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-73E Tract No. 204A
16.79 Acres, Washington Browder & Ratcliff,	Co., Etc.	) }	CIVIL ACTION NO. 79-C-78E Tract No. 217
232.87 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-80E Tract No. 239M-Part A
80.00 Acres, Washington Richard Kane, Etc.	Co.,	)	CIVIL ACTION NO. 79-C-82E Tract No. 239M-Part B
40.00 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-84E Tract No. 268M
30.00 Acres, Washington Browder & Ratcliff,	Co., Etc.	) )	CIVIL ACTION NO. 79-C-87E Tract No. 242
17.90 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-90E Tracts Nos. 244, et seq.
26.45 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-93E Tracts Nos. 236-1, et seq.
30.00 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-98E Tract No. 269-Part B, Area 2
340.00 Acres, Washington Browder & Ratcliff,	Co., Etc.	)	CIVIL ACTION NO. 79-C-101E Tract No. 269-Part B, Area 4
Defenda	nts.	;	

### JUDGMENT

This judgment applies to all of the civil actions listed in the caption of this document, and covers the entire estates taken in all tracts involved in such actions, as such estates and tracts are described in the Complaints and Amended Complaints filed in each of the said civil actions.

3.

The Court has jurisdiction of the parties and the subject matter of these actions.

4.

Service of Process nas been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in these actions.

5.

The Acts of Congress set out in paragraph 2 of the Complaints filed in subject actions give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on March 13, 1978, the United States of America filed its Declaration of Taking of certain estates in certain tracts of land involved in Civil Actions 78-C-107B and 78-C-112B, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

On February 13, 1979, the United States of America filed its Declaration of Taking of certain estates in all of the tracts of land involved in Civil Actions 79-C-73E, -78E, -80E, -82E, -84E, -87E, -90E, -93E, and -101E. On October 2, 1980 the United States of America filed its Amendment to Declaration of Taking which changed the estates taken in the tracts involved in Civil Actions 79-C-98E and 79-C-101E. However, the parties have filed a stipulation in each of these two cases agreeing that the date of taking should be considered as the date on which the original Declaration was filed. Therefore, title to the property described in the said Declaration of Taking and the Amendment thereto, which cover the ten civil actions listed in this paragraph, should be

vested in the United States of America as of February 13, 1979.

6.

Simultaneously with filing the Declarations of Taking, there was deposited in the Registry of this Court as estimated compensation for the estates taken in the subject tracts, certain sums of money, and all of this deposit has been disbursed, as set out below in paragraph 13.

7.

A Report of Commissioners was filed herein on April 15, 1981, by the commissioners appointed by the Court in these cases.

On June 19, 1981 the Plaintiff filed its objections to Report of Commissioners. On August 21, 1981 the Court entered its order overruling said objections. Therefore, the said Report of Commissioners should be accepted and adopted as the basis for the award made by this judgment.

The amount of just compensation for the estates taken in the subject tracts, as fixed by the commission, is set out below in paragraph 13.

8.

On May 6, 1981, the Defendant, Browder and Ratcliff, filed herein its Motion to Assess Costs, together with its brief in support of such motion. This motion was referred to United States Magistrate Robert S. Rizley for findings and recommendations to the Court.

On June 15, 1981 a hearing on Defendant's motion was held before said magistrate. Both Plaintiff and Defendant appeared by their respective counsel.

On August 31, 1981 Magistrate Rizley filed herein his Findings and Recommendations, in which he recommended that the Defendant, Browder and Ratcliff's Motion to Assess Costs be denied.

No exceptions or objections to such Findings and Recommendations of Magistrate were filed by any of the parties within

the time allowed. Accordingly, on September 15, 1981 an Order affirming the Magistrate's Findings and Recommendations and denying the Defendant's Motion to Assess Costs was entered in Civil actions 79-C-73-E, 79-C-78-E, 79-C-80-E, 79-C-82-E, 79-C-84-E, 79-C-87-E, 79-C-90-E, 79-C-93-E, 79-C-98-E, and 79-C-101-E. Likewise, on September 18, 1981 an Order affirming the Magistrate's Findings and Recommendations and denying the Defendant's Motion to Assess Costs was entered in Civil Actions 78-C-107-Bt and 78-C-112-Bt.

The Court concludes that such Orders should be confirmed and incorporated in this Judgment.

9.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 13.

10.

The defendants named in paragraph 13 as owners of the estates taken in subject tracts are the only defendants asserting any interest in such estates. All other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estates condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

11.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tracts, as such tracts are described in the Complaints and amendments thereto filed herein,

and such property, to the extent of the estates described in such Complaints and amendments thereto, is condemned, and title to the estates described in Civil Actions 78-C-107B, and 78-C-112B is vested in the United States of America as of March 13, 1978; and title to the estates described in Civil Actions 79-C-73E, 79-C-78E, 79-C-80E, 79-C-82E, 79-C-84E, 79-C-87E, 79-C-90E, 79-C-93E, 79-C-98E, and 79-C-101E is vested in the United States of America, as of February 13, 1979, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

12.

It is Further ORDERED, ADJUDGED and DECREED that on the date of taking in these cases, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 13, and the right to receive the just compensation for the taking of such estates is vested in the parties so named as their interests are shown in said paragraph.

13.

It is Further ORDERED, ADJUDGED and DECREED that the order, entered by this Court on August 21, 1981, overruling the Plaintiff's objections to the Report of Commissioners, hereby is confirmed and made a part of this Judgment by reference.

The Report of Commissioners, filed herein on April 15, 1981, hereby is approved and adopted by the Court as the basis for the award of just compensation for the taking of the subject property; and such award is allocated among the owners, all as shown by the following schedule:

#### OWNERS:

- 1. All interests in the property condemned in all civil actions listed in the caption hereof, EXCEPT C.A. 79-C-82E, were owned by Browder and Ratcliff, a co-partnership
- 2. The property condemned in C.A. 79-C-82E was owned as follows:
  Richard Kane ----- 1/2 and
  Browder and Ratcliff, a co-partnership -- 1/2

Award of just compensation, pursuant to Commissioner's Report, for all interests in all 12 civil actions: For property taken on March 13, 1978 ---- \$147,193.00 For property taken on February 13, 1979 ----- \$3,380,052.00 Total award ----\$3,527,245.00 Deposited as estimated compensation: 1. 1978 taking: C.A. No. 78-C-107B --- \$25,944.00 78-C-112B --- \$70,871.00 Deposit for 1978 taking -- \$96,815.00 Deposit deficiency for 1978 taking ----- \$50,378.00 2. 1979 Taking: C.A. No. 79-C-73E ---- \$10,120.00 79-C-78E --- \$23,036.00 79-C-80E --- \$75,444.00 79-C-32E --- \$35,382.00 79-C-84E ---- \$ 8,283.00 79-C-84E --- \$47,851.00 79-C-90E --- \$ 564.00 79-C-93E --- \$ 1,445.00 79-C-98E ---- \$11,608.00 79-C-101E --- \$18,579.00 Deposit for 1979 Taking ----- \$ 232,312.00 Deposit deficiency for 1979 Taking ------ \$3,147,740.00 Total deposit for all 12 cases -----\$ 329,127.00 Total deposit deficiency for all 12 cases ----- \$3,198,118.00 Allocation of award and disbursals: Browder and Ratcliff interest: For all of the 1978 taking ----- \$147,193.00 For all of the 1979 taking except 1/2 interest in C.A. 79-C-82E ----- \$3,295,020.00 Total share of total award ----- \$3,442,213.00 Disbursed to this owner ----- 311,436.00 Balance due to this owner ----- \$3,130,777.00 plus interest

#### 2. Richard Kane interest:

14.

It Is Further ORDERED, ADJUDGED and DECREED that the two Orders affirming the Magistrate's Findings and Recommendations and denying the Defendant's Motion to Assess Costs, which Orders are described above in paragraph 8, are confirmed and made a part of this Judgment by reference.

15.

It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject property as snown in paragraph 13, in the total amount of \$3,198,118.00, together with interest on such deficiency computed as follows:

- A. On \$50,378.00 (being the deficiency for the 1978 taking), at the rate of 6% per annum from March 13, 1978 until the date of deposit of such deficiency and interest, and
- B. On \$3,080,399.00 (being the deficiency for all of the 1979 taking except for the Richard Kane 1/2 interest in Civil Action 79-C-82E) at the rate of 6% per annum from February 13, 1979 until the date of deposit of such deficiency and interest, and
- C. On \$67,341.00 (being the deficiency for the Richard Kane 1/2 interest in Civil Action 79-C-82E) at the rate of 6% per annum from February 13, 1979 until the date of deposit of such deficiency and interest.

When the aforesaid deficiency and accrued interest is deposited by the Plaintiff the Clerk shall credit the entire

amount to the deposit for Civil Action No. 78-C-107B and then shall make certain disbursals from such deposit as follows:

- 1. To Browder and Ratcliff, a co-partnership, the sum of \$3,130,777.00 plus all of the accrued interest computed according to both "A" and "B" above in this paragraph.
- 2. To Richard Kane the sum of \$67,341.00 plus all of the accrued interest computed according to "C" above in this paragraph.

JAMES O ELLISON

United States District Judge

THOMAS R. BRETT

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

14.74	No.	in the second	

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	jack C. Silver, Clerk U. S. DISTRICT COURT
Plaintiff,	) CIVIL ACTION NO.
vs.	81-C-146-E
CHRISTIANSEN AVIATION, INC.,	)
Defendant.	) )

#### ORDER

The motion of Plaintiff for dismissal of the aboveentitled action with prejudice came on regularly for hearing;

And it appearing that Defendant in his answer makes no counterclaim against Plaintiff and will not be substantially prejudiced by a dismissal; therefor,

IT IS ORDERED that the above entitled action be, and it is hereby, dismissed with prejudice.

Dated this 23rd day of September, 1981.

SA DAMES O. ELISOT

UNITED STATES DISTRICT JUDGE

pt

# IN THE UNITED STATES DISTRICT COURT FOR THE INDICATE OF OKLAHOMA

SEP 25 1961 W

ALLSTATE INSURANCE COMPANY, Plaintiff,	Jack C. Silver, Clerk U. S. DISTREAL CORT
-vs-	) 81-C-296-E √
TEDDY BARNES and JERRY EVANS,	)
Defendants.	)

### notice of DISMISSAL WITHOUT PREJUDICE

, i.

COMES NOW the Allstate Insurance Company and dismisses the above and foregoing action without prejudice for the reason that the United States Marshal has been unable to serve either of the Defendants, and that the Plaintiff at this time is unable to furnish any additional information as to the whereabouts of either of said parties, and therefore dismisses without prejudice, reserving its right to refile when said information is available.

GIBBON, GLADD, TAYLOR, SMITH & HICKMAN, P. A.

Richard D. Gibbon

Attorney for the Plaintiff

1611 South Harvard

Tulsa, Oklahoma 74112

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

22: Fack Country to **U.S. DISTRICT COURT** NO. 81-C-41-BT

NOTICE OF DISMISSAL AGAINST DEFENDANT, JAMES ALBERT FELL

NOW ON this 22 day of September, 1981, Plaintiff, by and through his attorney of record, Stephen C. Wolfe, hereby dismisses the above cause without prejudice to refiling.

JAMES M. CAMERON

TOM LEE WESTLAKE and) JAMES ALBERT FELL

vs.

Stephen C. Wolfe 1325 South Main Tulsa, Oklahoma 74119

918/583-8574

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

In Re:

FRANK A. GAGLIANO, JR., a/k/a J. J. West,

NO. 80-00968

APPEAL NO. 81-C-163-B ✓

Debtor,

) T 1

PATRICK J. MALLOY III, \*Trustee,

NO. 80-0451

Plaintiff,

VS.

FORD MOTOR CREDIT COMPANY,

Defendant.

FILED

SEP 22 1987

Jack C. Silver, Clerk

Jack C. Silver, Clerk
U. S. DISTRICT COURT

#### ORDER

The Court has for consideration the Appeal from the Judgment of the Bankruptcy Court entered May 5, 1981, ordering that
the Trustee "recover of defendant, Ford Motor Credit Company
[Ford], the sum of \$250.00 as costs of this adversary proceeding
for the benefit of the estate in bankruptcy and as compensation
to the estate for legal services incurred in the prosecution of
this proceeding."

The facts in this case are undisputed. The debtor's Petition for Voluntary Bankruptcy was filed August 18, 1980. On September 22, 1980 Ford filed a Proof of Claim in which it claimed a security interest in a 1979 Ford Van which had been listed in the debtor's Petition as a secured asset in favor of Ford. Schedule A-2 of the debtor's Petition states that the market value of the Van is \$5,000.00 and the amount of the claim without deduction of the value of the security is \$5,756.20. Debtor's Petition further states that the claim is "Undisputed".

Trustee's Exhibit 1 is a letter dated September 19, 1980 from the Trustee to Ford requesting Ford to furnish documents "which establish a security interest in the debtor's 1979 Ford Van."

Trustee's Exhibit 2 is a letter from Ford to the trustee enclosing a copy of Ford's Proof of Claim and a form entitled "Disclaimant" for execution by the trustee disclaiming any interest in the Ford

Van. Also enclosed is a copy of the "Installment Sale Contract" dated November 17, 1978 between Frank Gagliano and Don Thornton Ford, Inc. Trustee's Exhibit 3 is a letter dated October 10, 1980 from the Trustee to Ford referring to Ford's proofs of claim and requesting certified copies of Ford documents showing a perfected security interest in the Ford Van. Trustee's Exhibit 4 is a letter dated December 3, 1980 from Ford to the trustee enclosing certified copies of the Ford documents establishing a perfected security interest in the Ford Van in favor of Ford.

On December 3, 1980 the Trustee filed a complaint against Ford claiming a "superior right" as to Ford in the Ford Van and requesting the Court to permit the Trustee to sell the Ford Van and for other relief. Ford filed its answer to the Trustee's complaint on January 14, 1981 claiming Ford's superior interest in the Ford Van and requesting judgment against the plaintiff. On March 13, 1981 the Court entered an Interlocutory Order finding that the Trustee has abandoned any interest in the Ford Van and entering Judgment for Ford.

The Court set an evidentiary hearing for April 8, 1981 on the assessment of costs. At the hearing the Trustee testified that after examining the debtor at the first meeting of creditors, it was determined that the debtor's 1979 Ford Van had been repossessed by Ford in August of 1980 just prior to the filing of the bank-ruptcy; that no representative of Ford appeared at the first meeting; that he wrote Ford the letter identified as Trustee's Exhibit 1; that after receiving Ford's Proof of Claim he wrote Ford the letter identified as Trustee's Exhibit 3; that he did not hear from Ford until after he filed the complaint on December 3, 1980, when he received Ford's letter dated December 3, 1980 identified as Trustee's Exhibit 4.

It is the Trustee's position that Ford had the responsibility as a secured creditor "to come forward and do something to relieve the Trustee of the burden of worrying about that asset." (R.7)

Trustee claims that he "expended time and energy in getting Ford to come in and protect their own interests, and that I, as  $\underline{\text{Trustee}}$ , am entitled to be compensated for that time and effort." (Emphasis added) (R.7)

After Mr. Malloy testified that he "as Trustee, [is] entitled to be compensated for that time and effort", the Bankruptcy Judge asked Mr. Malloy what he suggested as a "reasonable measure of that compensation?" Mr. Malloy then suggested the sum of \$300.00 (R.8)

On cross-examination the Trustee testified that he did nothing prior to filing the complaint to determine whether Ford had perfected its security interest in the Ford Van in Tulsa County. (R.7)

On further questioning by the Bankruptcy Judge Mr. Malloy testified that the compensation he was seeking was for legal services he rendered the estate as attorney for himself as trustee. Mr. Malloy stated that the fee was "very nominal" in view of the "time in Court, reviewing their documents, filing a complaint . . . one pre-trial conference and now a hearing in this regard." (R.11).

Although the Bankruptcy Judge made no specific findings of facts and conclusions of law, he did make some remarks which he stated would be his "findings and conclusions and decision" in the case. He held that the \$250.00 fee that he was awarding the estate was "for legal services which Mr. Malloy rendered, not in his capacity as Trustee, but in his capacity as attorney representing the estate." (R.14) The Bankruptcy Judge's remarks are as follows:

This case was filed under the new bankruptcy code August 18, 1980. There is nothing to conclude from the evidence other than the fact that Ford Motor Credit Corporation has repossessed this vehicle, but has not proceeded to foreclosure of their interest by the time of bankruptcy. It would also appear to me that by operation of the automatic stay provision of the code that Ford Motor Credit was stayed from any further procedure to enforce it's lien and was put to the proposition of seeking relief from that stay in order to proceed with their foreclosure.

There is one alternative method that could have been used, I would suppose, and that is a request for abandonment which is more or less what Trustee's Exhibit Two amounts to, but apparently with that request for abandonment they didn't give the Trustee much reason to think that he should abandon it.

So my problem is, in these matters, that the creditors don't follow either one of those two procedures, and I'm sure the best procedure, the most positive one that seeks positive relief entitled them to it on a time schedule, is the proposition of seeking relief from stay.

If they don't resort to that then I can't have much of an attitude other than the fact that they ought to bear the cost of the Trustee sort of having to sort of bring a reverse relief from stay in a procedure here to get them to come in here and prove their entitled to it. Kind of a bankruptcy equivalent of a reverse condemnation hearing. I've heard that referred to in State Court, and I don't know whether that's a proper term or not. I'm aware of the fact that it cost the creditors something to do that; cost them filing fees and legal services, but in many instances the payment of those fees and that inconvenience can be obviated by really up front furnishing the Trustee sufficient documentation, which wasn't done with the filing of the claim, which is usually sufficient if it's adequately documented; wasn't done with the equivalent of a request for abandonment, and I would suppose that if they had proceeded to foreclose their interest in the course of all this prior to the time that the estate's interest was disposed of, you might have a contempt situation.

I really do think that the matter of seeking relief and clearing up these questions is not one that the Trustee bears the burden of, but under the code, and under any rules that I know of, the secured party bears the burden of a disposing of them, and recognizing that if they do pay attention to their problems, they are likely, in most instances, to get them disposed of very quickly. I'm not too sympathetic with them when they cause the estates to undergo these legal costs and require the Trustee to expend time and effort as Trustee and as attorney.

On the basis of the evidence here today indicating the several items of correspondence that was conducted on behalf of the estate, and ultimately a complaint being filed, attendance at the pre-trial conference, and so forth, I'll find that the estate should be compensated in the amount of two hundred fifty dollars as the reasonable cost of the legal services rendered to the estate.

As far as I know the Bankruptcy Court has some very broad jurisdiction to allow costs in a case, not only against a party who may not prevail, but the party who may prevail. So we have an interlocutory order but we can enter a final judgment dismissing the complaint on it's merits, but taxing as costs an attorney fee in the amount of two hundred fifty dollars against the plaintiff. (R.11-13)

Although the Bankruptcy Judge referred to no specific provisions of the Bankruptcy Code, from his remarks it appears that the basis for his judgment is that the secured party bears the burden of seek-

ing relief so that the Bankruptcy estate is not required "to undergo these legal costs and require the Trustee to expend time and effort as Trustee and as attorney." The Bankruptcy Judge then concluded that "the Bankruptcy Court has some very broad jurisdiction to allow costs in a case, not only against a party who may not prevail, but'a party who may prevail." (R.13)

In support of his argument that the Bankruptcy Court may assess costs against Ford under the facts of this case, the Trustee, in his Response Brief refers to Title 11 §\$503 and 506(c) and a comment from Collier's Bankruptcy Mannual, §503.04 that the Bankruptcy Court has broad equitable powers to assess costs "to penalize delay."

\$503 of Title 11 covers "Allowance of Administrative expenses." \$506(c) provides that "[the] Trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim."

\$501(a) of Title 11 provides for "Filing of proof of claims" by a creditor. Under the provisions of the Bankruptcy Code of 1978 if a creditor has an allowed claim that is secured by a lien on property in which the estate has an interest, the claim is a "secured claim" to the extent of the value of the creditors interest and an unsecured claim to the extent that the value of the creditor's interest in such property is less than the amount of the allowed claim. Therefore, an undersecured creditor has both a secured claim and an unsecured claim. 11 U.S.C. \$506(a). The filing of a "Proof of Claim" is prima facie evidence of the claim's validity and amount. In re Busman, Bkrtcy. N.Y. 1980, 5 B.R. 332.

Ford's claim was a "secured claim" to the extent of its security and an unsecured claim to the extent that the security interest was insufficient to satisfy its claim. Rule 302(e) of the Rules of Bankruptcy Procedure permits a claim to be filed "within 6 months after the first date set for the first meeting of creditors." Ford's claim was filed within 5 weeks after the Debtor's Petition was filed.

The additional Ford documents establishing its "secured claim" in the Ford Van were furnished the Trustee in Ford's letter of December 3, 1980, well within the 6 month period.

The Trustee, "with the Court's approval," may employ an attorney to represent or assist the Trustee in carrying out his duties and "may authorize the trustee to act as attorney" for the estate. 11 U.S.C. §327(a) and (d). Where the "court has authorized a trustee to serve as an attorney . . . the Court may allow compensation for the trustee's services as such attorney . . . only to the extent that the trustee performed services as attorney . . . and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney." 11 U.S.C. §328(b).

Rule 215(a) of the Rules of Bankruptcy Procedure provides:

"No attorney . . . for the trustee . . . shall be employed except upon order of the court. The order shall be made only upon application of the trustee . . . stating the specific facts showing the necessity for such employment, the name of the attorney . . ., the reasons for his selection, the professional services he is to render . . ."

This rule on "Employment of Attorneys" was not followed in this case. Had it been, it is doubtful that the trustee could have satisfied the Rule's requirement of stating facts "showing the necessity for such employment." If the trustee had waited a few days longer before filing the complaint, he would have received Ford's letter of December 3, 1980 and the documents establishing Ford's "secured claim." He could then have disclaimed any interest in the Ford Van, thereby eliminating the necessity for his employment as attorney for the purpose of filing the complaint. Additionally, Mr. Malloy could apparently have avoided the necessity for filing the complaint had he written Ford a letter as attorney advising Ford that he would file a complaint if he did not receive documents from Ford establishing its "secured claim" within a specified number of days. Also, the trustee could have alleviated his "worrying about that asset" by checking the records of Tulsa

County or Oklahoma County which would have revealed the validity of Ford's "secured claim".

The duties of the trustee require that he "collect and reduce to money the property of the estate . . . investigate the financial affairs of the debtor . . . examine proofs of claims and object to allowance of any claim that is improper." 11 U.S.C. §704.

"The trustee . . . may abandon any property which is either worthless, or overburdened, or for any other reason certain not to yield any benefit to the general estate." Collier on Bankruptcy (14th ed.) F.502. It is the trustee's duty to determine whether such property will "yield any benefit" to the estate. Although the Rules of Bankruptcy Procedure provide for application to and approval by the Court for the abandonment of such property, the case may be closed without such application and order and "the property shall be deemed to have been abandoned with the approval of the court." Rule 608. "In abandoning property no less than in any other administrative function, the trustee acts as an officer of the court . . " (emphasis supplied) Collier on Bankruptcy (14th ed.) F.510.

In discussing the "frequently litigated question of administrative expenses chargeable to lienholders", Collier on Bankruptcy (14th ed) P.1402 states:

"There is on one hand the rule that lienholders should not be subjected to expenses of administering an estate in which they are not interested. On the other hand, expenses may be incurred that will benefit them and possibly only them. Courts have repeatedly allocated costs of administration to lienholders in proportion to the benefit they derived or the expenses saved them." (citations omitted)

The court in the case of <u>In re Hansen & Birch</u>, 292 F.898, 899 (N.D. Ga. 1923) stated:

"... the trustee, who, instead of relinquishing the property to lienor as burdensome to the estate, decided to contest the lien. Though this decision was doubtless made in good faith and upon a reasonable hope of success, it proved wrong. He and those he represents and not the successful adversary, must bear the cost of the error."

Neither the provisions of the Bankruptcy Act nor the Rules of Bankruptcy Procedure permit the assessment of costs against Ford on the basis of the undisputed facts in the instant case.

Rule 810 of the Rules of Bankruptcy Procedure provides that "the district court may affirm, modify, or reverse a [bankruptcy judge's] judgment or order, or remand with instructions for further proceedings. The court shall accept the [bankruptcy judge's] findings of fact unless they are clearly erroneous . . . The "clearly erroneous" rule does not apply to questions of law or to mixed questions of fact and law. Stafos v. Jarvis 477 F.2d 369 (10th Cir. 1973); Matter of Hill 472 F.Supp. 844, (Kan. 1979).

IT IS THEREFORE ORDERED that the judgment of the Bankruptcy Court in favor of the Trustee be and is hereby reversed and the matter is hereby remanded to the Bankruptcy Court for further proceedings in accordance with the views expressed herein.

DATED this 2/57 day of Sept., 1981.

UNITED STATES DISTRICT JUDGE

FILED

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEP22 1951

UNITED STATES OF AMERICA,

Plaintiff,

U. J. Sibra Clark

vs.

CIVIL NO. 81-C-317-E

BETTY SMITH a/k/a BETTY S. BOWLIN,

Defendant.

### AGREED JUDGMENT

This matter comes on for consideration this ZZ day of \_\_\_\_\_\_, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Betty Smith a/k/a Betty S. Bowlin, appearing pro se.

The Court being fully advised and having examined the file herein finds that Defendant, Betty Smith a/k/a Betty S. Bowlin, was personally served with Sümmons and Complaint on July 3, 1981.

The parties agree and consent that judgment may be entered against the Defendant, Betty Smith a/k/a Betty S. Bowlin, in the amount of \$743.38 (less the sum of \$150.00 which has been paid).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Betty Smith a/k/a Betty S. Bowlin, for the principal sum of \$743.38 (less the sum of \$150.00 which has been paid), plus the accrued interest of \$86.45 as of October 30, 1980, plus interest at 7% per annum from October 30, 1980 until the date of Judgment, plus interest at the legal rate on the principal sum of \$743.38 from the date of Judgment until paid.

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING

UNITED STATES ATTORNEY

PAULA S. OGG

Assistant U.S. Attorney

BETTY SMITH a/k/a

BETTY S. BOWLIN

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SEP 181981

UNITED STATES OF AMERICA,	Jack C. Silver, Clurk U. S. DISTRICT COURT
Plaintiff,	)
vs.	CIVIL ACTION NO. 81-C-363-B
ELIHEE E. HOPKINS,	
Defendant.	)

### DEFAULT JUDGMENT

This matter comes on for consideration this day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Elihee E. Hopkins, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Elihee E. Hopkins, was personally served with Summons and Complaint on July 22, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Elihee E. Hopkins, for the principal sum of \$731.70 (less the sum of \$290.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

SEP 1 8 1981

UNITED STATES OF AMERICA,	top 0.5 by 4. to the property of the
Plaintiff,	
vs.	) CIVIL ACTION NO. 81-C-350-B
PHILLIS HOOKS,	)
Defendant.	, )

### DEFAULT JUDGMENT

This matter comes on for consideration this day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Phillis Hooks,, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Phillis Hooks, was personally served with Summons and Complaint on July 16, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Phillis Hooks, for the principal sum of \$1,048.15 (less the sum of \$175.00 which has been paid), plus the accrued interest of \$181.53 as of August 30, 1979, plus interest at 7% from August 30, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,048.15 (less the sum of \$175.00) from the date of Judgment until paid.

S/ THOMAS R. BRETT

## UNITED STATES DISTRICT COURT FOR THE LAND INCREMENTAL OF OKLAHOMA

SEP 181981

UNITED STATES OF AMERICA,	Jack C. Silver, Clark
Plaintiff,	U. S. DISTRICE COURT
vs.	) Civil No. 81-C-312-B
JOHN W. NICHOLS,	(
Defendant.	)

### AGREED JUDGMENT

of \_\_\_\_\_\_\_, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, John W. Nichols, appearing pro se.

The Court being fully advised and having examined the file herein finds that Defendant, John W. Nichols, was personally served with Summons and Complaint on August 10, 1981.

The parties agree and consent that judgment may be entered against the Defendant, John W. Nichols, in the principal amount of \$11,794.83, plus the accrued interest of \$1,262.33 as of March 20, 1981, plus interest at 7% per annum from March 20, 1981 until the date of Judgment, plus interest at the legal rate on the principal sum of \$11,794.83 from the date of Judgment until paid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiff have and recover judgment against Defendant, John W. Nichols, for the principal sum of \$11,794.83, plus the accrued interest of \$1,262.33 as of March 20, 1981, plus interest at 7% per annum from March 20, 1981 until the date of Judgment, plus interest at the legal rate on the principal sum of \$11,794.83 from the date of Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING

UNITED STATES ATTORNEY

PAULA S. OGG

Assistant U.S. Attorney

IOHN W. NICHOLS

MAUDIE B. LEMONS,

Plaintiff,

Vs.

GALVESTON TRUCK LINES, INC.

Defendant.

### ORDER OF DISMISSAL

ON this day of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

JUDGE, UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

JERRY L. WITT,

Attorney for the Plaintiff.

ALFRED B KNIGHT.

Attorney for the Defendant.

SEP 1 8 1981 /

PETRA DRILLING CORPORATION, an Oklahoma Corporation,

Plaintiff.

VS.

SOVEREIGN SUPPLY COMPANY, a Delaware Corporation,

Defendant.

NO. 80-C-714-B ✓

### ORDER OF DISMISSAL

On this day came on to be heard the Stipulation of Dismissal of Plaintiff, Petra Drilling Corporation, seeking dismissal of its causes of action against Sovereign Supply Company, and the Court having considered said Stipulations, is of the opinion that this cause of action should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled and numbered cause be and the same is hereby dismissed with prejudice to the right of Petra Drilling Corporation, Plaintiff, to ever reassert the claims and causes of action asserted therein or which may have been asserted therein against Sovereign Supply Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cost of Court incurred in the above entitled and numbered cause be paid by each respective party incurring same.

SIGNED this 18 day of Sept., 1981.

Thomas Ko

Motion to Dismiss - Page One

APPROVED AS TO FORM AND SUBSTANCE:

PRICHARD, NORMAN & WOHLGEMUTH

Ву: 🔼

Don E. Weichmann

909 Kennedy Building Tulsa, Oklahoma 74103 918/583-7571

ATTORNEYS FOR PLAINTIFF

FREYTAG, MARSHALL, BENEKE, LAFORCE, RUBINSTEIN & STUTZMAN

By:

Byron L. Woolley

3131 Turtle Creek Blvd. Dallas, Texas 75219 214/522-5171

ATTORNEYS FOR DEFENDANT

EARNEST COBB, father and next friend of DAVID GLEN COBB, a minor,

Plaintiff,

SEP 18,198/ Jacke C Liever U. S. District Court No. 80-C-655-B

VS.

MONTGOMERY ELEVATOR COMPANY, a foreign corporation,

Defendant.

ORDER

NOW on this  $18^{+4}$  day of September, 1981, upon the Joint Application to Dismiss of the parties herein the Court finds that the following order should issue:

IT IS THEREFORE ORDERED that the above styled and numbered cause is dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

THOMAS R. BRETT UNITED STATES DISTRICT JUDGE

		UNITED STATES NORTHERN I	DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA	SEP 1 8 1981
UNITED S	STATES	OF AMERICA,	)	Jack C. Silver, Clark
		Plaintiff,	)	U. S. DISTRICT COURT
vs.			) CIVIL ACTION NO.	81-C-404-E
CARL E.	LANE,		) )	
		Defendant.	) )	

This matter comes on for consideration this \_\_/\_\_\_ day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Carl E. Lane, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Carl E. Lane, was personally served with Summons and Complaint on August 22, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Carl E. Lane, for the principal sum of \$1,226.55, plus the accrued interest of \$334.28 as of August 26, 1981, plus interest at 7% from August 26, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,226.55 from the date of Judgment until paid.

## IN THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAGNAFLUX XMAS, INC.,	)	; **	
Plaintiff,	)	<b>.</b>	No former to Benedict
vs.	) 81-C-403-E		SEP 1 8 1981
LAVACA TESTING, INC.,	ý		C. Chymr. Co. Y
Defendant.	, ,	IJ	S. DISTAICE COURT

### JUDGMENT BY DEFAULT

ORDERED, ADJUDGED AND DECREED by this Court that the Defendant is in default herein, and that the allegations in Plainitiff's Complaint are to be taken as true and confessed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that judgment be entered herein in favor of the Plainitff above named, and against the defendant above named, in the amount of Twenty-Three Thousand Nine Hundred Eighty-One and Seventy-Seven One Hundredths Dollars (\$23,981.77), with interest thereon at the legal rate from this date of judgment until fully paid, an attorney's fee in the amount of Three Thousand Six Hundred Dollars (\$3,600.00), together with costs expended herein in the amount of Sixty-Four and Fifty-Three One Hundredths Dollars (\$64.63).

Dated at Tulsa, Oklahoma, this // day of Syst ,

BY THE COURT:

S/ JAMES O. ELLISON
United States District Judge

SEP 181981

UNITED STATES OF AMERICA, Plaintiff,	Jack C. Silver, Clark U. S. DISTAICT COURT
vs.	CIVIL ACTION NO. 81-C-384-E
TERRY L. WOOD, a/k/a TERRY LYNN DRAKE,	) ) )
Defendant.	) )

### DEFAULT JUDGMENT

This matter comes on for consideration this // day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Terry L. Wood, a/k/a Terry Lynn Drake, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Terry L. Wood, a/k/a Terry Lynn Drake, was personally served with Summons and Complaint on July 28, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Terry L. Wood, a/k/a Terry Lynn Drake, for the principal sum of \$990.24 (less the sum of \$100.00 which has been paid), plus the accrued interest of \$581.29 as of May 5, 1981, plus interest at 7% from May 5, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$990.24 (less the sum of \$100.00) from the date of Judgment until paid.

S/ JAMES O. ELLISON UNITED STATES DISTRICT JUDGE

UNITED STATES DIS	TRICT COURT FOR THE SEP 1 8 1981
	RICT OF OKLAHOMA
UNITED STATES OF AMERICA,	U.S. DISTRICT COURT
Plaintiff,	)
vs.	CIVIL ACTION NO. 81-C-379-E
LeANN L. SAMPLE,	)
Defendant.	<b>)</b>

The Court being fully advised and having examined the file herein finds that Defendant, LeAnn L. Sample, was personally served with Summons and Complaint on July 28, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, LeAnn L. Sample, for the principal sum of \$753.95 (less the sum of \$725.00 which has been paid), plus the accrued interest of \$299.19 as of June 25, 1979, plus interest at 7% from June 25, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$753.95 (less the sum \$725.00) from the date of Judgment until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

		NORTHERN	DISTRICT COURDISTRICT OF OK	T FOR THE LAHOMA	SEP 1 8 1981
UNITED	STATES	OF AMERICA,	)		PROCESSIVE OF Y
		Plaintiff,	)		v. S. Eistnich Court
vs.			) CIVII	L ACTION NO	. 81-C-362-E
DENNIS	L. WELI	LS,	)		
		Defendant.	)		

The Court being fully advised and having examined the file herein finds that Defendant, Dennis L. Wells, was personally served with Summons and Complaint on July 22, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Dennis L. Wells, for the principal sum of \$850.40, plus the accrued interest of \$270.86 as of August 1, 1981, plus interest at 7% from August 1, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$850.40 from the date of Judgment until paid.

S/ JAMES O. ELLISON

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UNITED STATES DI	STRICT COURT FOR THE TRICT OF OKLAHOMA
NOKIMBIN DIS	SEP 1 8 1981
UNITED STATES OF AMERICA,	)
Plaintiff,	the C. Silver, Clark U. S. EISTEIGE COURT
vs.	,
vs.	) CIVIL ACTION NO. 81-C-359-E
JEFFERY L. JONES,	) }
Defendant.	) }

This matter comes on for consideration this \_\_\_\_/7 day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jeffery L. Jones, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jeffery L. Jones, was personally served with Summons and Complaint on July 22, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Jeffery L. Jones, for the principal sum of \$708.24, plus interest at the legal rate from the date of Judgment until paid.

SEP 1 8 1981

UNITED STATES OF AMERICA,	) tok c. siling of t
Plaintiff,	Jack C. Silver, Clerk U. S. DISTRICT COURT
VS.	) CIVIL ACTION NO. 81-C-106-B
BRADLEY M. TYLER and EUGENIA CAROL TYLER,	) ) )
Defendants.	) }

#### JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma; and, the Defendants, Bradley M. Tyler and Eugenia Carol Tyler, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Bradley M. Tyler and Eugenia Carol Tyler, were served by publication as shown on the Proof of Publication filed herein.

It appearing that the Defendants, Bradley M. Tyler and Eugenia Carol Tyler, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of land in Lot 4 in Section 12, Township 28 North, Range 22 East of the Indian Meridian, Ottawa County, Oklahoma, more particularly described as follows, to-wit: Beginning at a point 516.07 feet West of the East line of said Lot 4, and 425 feet North of the South line of said Lot 4; thence North 100 feet; thence West 132 feet; thence South 100 feet; thence East 132 feet to the place of beginning.

THAT the Defendants, Bradley M. Tyler and Eugenia Carol Tyler, did, on the 6th day of July, 1977, execute and deliver to the Administrator of Veterans Affairs, their mortgage and

mortgage note in the sum of \$17,500.00 with 8 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Bradley M.

Tyler and Eugenia Carol Tyler, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$16,907.21 as unpaid principal with interest thereon at the rate of 8 percent per annum from March 1, 1980, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Bradley M. Tyler and Eugenia Carol Tyler, in rem, for the sum of \$16,907.21 with interest thereon at the rate of 8 percent per annum from March 1, 1980, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of this Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed

of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

S/ THOMAS R. BRETT

SEP 1 8 1981

UNITED STATES OF AMERICA, )	Jack C. Silver, Chark U. S. District court
Plaintiff, )	
Js. ,	CIVIL ACTION NO. 81-C-320-E
FREDRICK E. ROWE,	
Defendant. )	

#### DEFAULT JUDGMENT

This matter comes on for consideration this \_\_/\_\_ day of September, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Fredrick E. Rowe, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Fredrick E. Rowe, was personally served with Summons and Complaint on July 8, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Fredrick E. Rowe, for the principal sum of \$2,647.11 (less the sum of \$10.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING United States Attorney

PHILARD L. ROUNDS, JR. Assistant U. S. Attorney

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UNITE	D STATES	DISTRICT	CC	DURT	FOR	THE
N	ORTHERN	DISTRICT	OF	OKL	HOMA	1

SEP 1 8 1981.

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UNITED STATES OF AMERICA,	
Dlaimtice	) Jack C. Cilver, Clerk
Plaintiff,	ULS DESTALOT COURT
vs.	CIVIL ACTION NO. 81-C-297-E
ALBERT N. DAY,	)
Defendant.	) )

### DEFAULT JUDGMENT

This matter comes on for consideration this \_\_\_\_\_\_ day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Albert N. Day, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Albert N. Day, was personally served with Summons and Complaint on June 29, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Albert N. Day, for the principal sum of \$661,48, plus the accrued interest of \$270.11 as of March 1, 1981, plus interest at 7% from March 1, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$661.48 from the date of Judgment until paid.

S/ JAMES O. DUSON
UNITED STATES DISTRICT JUDGE

LARRY DEAN LEE,		)		
	Plaintiff,	)		
vs.		)		
		)	Civil NO. 80-C-356-E	V
UNITED STATES OF A	MERICA,	)		
	Defendant.	)		

198. dw

JUDGMENT

JOUR C. Silver, Carlotte.
U. S. DISTRICT COMM.

This action having been commenced on June 25, 1980, and the defendant therein, having appeared after personal service of summons upon it, and having offered by notice in writing served on plaintiff to permit judgment against it for the sum of \$13,000.00, inclusive of costs accrued to September 16th, 1981, and the plaintiff having duly accepted defendant's offer by notice in writing served upon defendant within ten (10) days thereafter; and the offer and notice of acceptance together with proof of service thereof having been filed;

IT IS ORDERED AND ADJUDGED that Larry Dean Lee, plaintiff, recover of the United States of America, defendant, the sum of \$13,000.00, inclusive of costs accruing to September 16th, 1981.

Dated at Tulsa, Oklahoma, on the the day of September, 1981.

Judge of the United States District Court

R. J. Childers

Attorney for Plaintiff

Attorney for Defendant

Sept 17,198 JW

UNITED STATES OF AMERICA,

Plaintiff,

Jack C. Silver, \* ...
U. S. DISTRICT COURT

CIVIL ACTION NO. 81-C-405-C V

Vs.

DANNY L. WARD,

Defendant.

### DEFAULT JUDGMENT

This matter comes on for consideration this // day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Don J. Guy, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Danny L. Ward, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Danny L. Ward, was personally served with Summons and Complaint on August 7, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Danny L. Ward, for the principal sum of \$932.94, plus the accrued interest of \$273.18 as of August 26, 1981, plus interest at 7% from August 26, 1981, until the date of Judgment, plus interest at the legal rate on the principal sum of \$932.94 from the date of Judgment until paid.

UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Left 17,1981

Lack U. 50001,

Lack U. 50001,

Plaintiff,

Vs.

CIVIL ACTION NO. 80-C-290-C \
ELBERT L. ELLARD,

Defendant.

### DEFAULT JUDGMENT

This matter comes on for consideration this // day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Elbert L. Ellard, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Elbert L. Ellard, was personally served with Summons and Complaint on June 12, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Elbert L. Ellard, for the principal sum of \$729.99 (less the sum of \$450.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

ANNE M. DARTT,	)	
Plaintiff,	)	·
v.	) No. 74-C-221-C	programme of the control of the cont
SHELL OIL COMPANY,	)	
Defendant.	) )	S. Michael
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#### ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice, and this Court being fully advised in the premises and the parties having stipulated, and the Court having found that the parties have reached a private settlement of the individual claims of Plaintiff and that such claims should be dismissed, it is, therefore,

ORDERED, ADJUDGED and DECREED that the Complaint of Plaintiff, and her causes of action set forth therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 16 day of Signed) H. Dale Cook

U.S. District Court Judge

SUPER-SAV DRUG, INC.,

Plaintiff,

Vs.

No. 81-C-24-C

SOUTHWEST COMPUTING CO., INC.,

GARY GROFF, individual, and

WEST ELECTRIC, INC.,

Defendants.

Defendants.

### ORDER

Now before the Court is plaintiff's application to enter Southwest Computing default against defendants Gary Groff for failure to plead or otherwise defend, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

On April 15, 1981 default was entered against defendants
Southwest Computing and Gary Groff for failure to plead or
otherwise defend. On May 1, 1981, a hearing was held on the
issue of default judgment as to defendants West Electric and
Groff. At that time, the Court allowed defendants twenty days to
file an entry of appearance and answer to the complaint and cross
complaint. At that time, the Court noted that upon failure to
file within the prescribed time, default judgment would be
entered.

Since defendant Groff has failed to file an entry of appearance and answer to the complaint, default judgment is hereby entered against defendant Gary Groff and Southwest Computing.

It is so Ordered this 151 day of August, 1981.

H. DALE COOK Chief Judge, U. S. District Court

SUPER-SAV DRUG, INC., Plaintiff, ν. SOUTHWEST COMPUTING CO., INC. and GARY GROFF, individual, and WEST ELECTRIC, INC., Defendants. No. 81-C-24-C WEST ELECTRIC, INC., Cross-Plaintiff, FILED v. ~ SEP 151981 SOUTHWEST COMPUTING CO., INC., Cross-Defendant. Inch C. Dayner or in

# ORDER FOR ENTRY OF DEFAULT JUDGMENT AND TO SET HEARING BEFORE THE COURT AS TO DAMAGES

The plaintiff, Super-Sav Drug, Inc. ("Super-Sav") having moved for default judgment against the defendants, Southwest Computing Co., Inc. ("Southwest") and Gary Groff ("Groff"), and the Court having granted the defendants twenty (20) days to file an entry of appearance and answer to Super-Sav's Complaint and West Electric's Cross-Complaint, such twenty (20) days having expired with defendants Southwest and Groff failing to file within the prescribed time period, it is ordered that:

- 1. In view of the default of the defendants, Southwest and Groff, the only issues remaining to be determined in the within action against the defendants Southwest and Groff are:
  - (a) the amount of plaintiff's damages, and
  - (b) plaintiff's claim for allowance of plaintiff's attorney's fees;
- 2. The amount of plaintiff's damages and plaintiff's claim for allowance of plaintiff's attorney's fees be determined by the Court upon a hearing;
- 3. The aforesaid hearing as to plaintiff's damages and plaintiff's claim for allowance of attorney's fees be set down and held;

4. A judgment in the amount as determined at the aforesaid hearing be made and entered herein in favor of the plaintiff against the defendants Southwest and Groff by reason of the matters and things alleged by the plaintiff in its Complaint against defendants Southwest and Groff.

DATED this 15 day of September, 1981.

BOBBY JOE CHURCH,

Plaintiff,

SEP 1.5 1981 Joch C. Silver, Clark

U. S. DISTRICT COURT

vs.

No. 81-C-406-E

WHITE BAIL BONDING COMPANY; MRS. TERESA WHITE; MR. EARL WHITE, JR.; and MR. EDDIE SMITH, alias TEXAS SLIM,

Defendants.

### ORDER

On August 6, 1981, Plaintiff filed a Motion for Leave to Proceed in forma pauperis and tendered his Complaint for filing. Plaintiff's Complaint purports to state a civil rights claim pursuant to 42 U.S.C. § 1983. Plaintiff alleges that the Defendants, owners and employees of a local bail bonding concern, kidnapped Plaintiff and transported him from Colorado to Oklahoma illegally and without his consent, all in violation of his civil rights.

Section 1983 provides:

Every person, who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the parties injured in an action at law, suit in equity, or other proper proceeding for redress.

It is elementary that a defendant must be an agent or representative of the state or else acting under color of state law before a cognizable claim is presented under 42 U.S.C. § 1983. This "state action" element is totally absent from both the allegations of Plaintiff's Complaint and the factual circumstances surrounding his Complaint.

This Court is mindful of the Tenth Circuit's procedural requirements in forma pauperis actions. See <a href="Phillips v. Carey">Phillips v. Carey</a>, 638 F.2d 207, 208 (Tenth Cir. 1981), <a href="cert.">cert.</a> <a href="denied">denied</a> <a href="U.S.">U.S.</a>,

101 S.Ct. 1526 (1981). The Court is also aware that although pro se Complaints are to be liberally construed, <a href="Haines v. Kerner">Haines v. Kerner</a>, 404 U.S. 519, 520 (1972), it is clear that there is no Constitutional right of access to the courts to prosecute a frivolous action. <a href="Phillips v. Carey">Phillips v. Carey</a>, <a href="supra">supra</a>. Under 28 U.S.C. § 1915(d), if the Court finds a case to be frivolous, improper or obviously without merit, the Court should dismiss the case. <a href="Smart v. Villar">Smart v. Villar</a>, 547 F.2d 112, 113 (Tenth Cir. 1976); <a href="Redford v. Smith">Redford v. Smith</a>, 543 F.2d 726, 728 (Tenth Cir. 1976); <a href="Harbolt v. Alldredge">Harbolt v. Alldredge</a>, 464 F.2d 1243, 1244 (Tenth Cir. 1972), <a href="cert.denied">cert.</a> denied</a>, 409 U.S. 1025 (1972). A forma pauperis Complaint is frivolous or without merit if the Plaintiff can make no rational argument on the facts or the law to support his claim. <a href="Martinez v. Aaron">Martinez v. Aaron</a>, 570 F.2d 317 (Tenth Cir. 1978); <a href="Collins v. Hladky">Collins v. Hladky</a>, 603 F.2d 824, 825 (Tenth Cir. 1979).

Bearing in mind the applicable authorities, after examining this Complaint, the Court concludes that allowing Plaintiff leave to file in forma pauperis would, under the circumstances, be a useless act since immediate dismissal would be fully warranted and required. Accordingly, Plaintiff will be denied leave to proceed in forma pauperis.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's application for leave to proceed in forma pauperis is denied.

It is so Ordered this 14th day of September, 1981.

JAMES O. ELLISON

UNITED STATES OF AMERICA,	)
Plaintiff,	
vs.	) CIVIL ACTION NO. 81-C-315-E
BLAKE M. JAMESON,	
Defendant.	SEP 15 1981

#### DEFAULT JUDGMENT

tock C. Other, chark U. S. DISPITED PRINT

This matter comes on for consideration this // day of September, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Blake M. Jameson, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Blake M. Jameson, was personally served with Summons and Complaint on July 6, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Blake M. Jameson, for the principal sum of \$685.33 (less the sum of \$160.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT U. S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA U. S. DISTRICT COURT

DOUGLAS FREIGHT FORWARDING, COMPANY, INC.,

Plaintiff,

vs.

RREATER KANSAS CITY AGENCY, INC.,

Defendant.

### ORDER OF DISMISSAL

Upon application of the Plaintiff to which the Defendant agrees and for good cause shown, Plaintiff's complaint is hereby dismissed without prejudice.

S/ THOMAS R. BREIT

District Judge

APPROYED AS TO FORM;

Counsel for Plaintiff

Councel for Defendant

(4) 18 1981

UNITED STATES OF AMERICA,

Plaintiff,

Jack C. Silver, Clark
U. S. DISTRICT COURT

Vs.

CIVIL ACTION NO. 80-C-392-B

NANCY E. BIGGERSTAFF, a/k/a NANCY BIGGERSTAFF,

Defendant.

### DEFAULT JUDGMENT

This matter comes on for consideration this day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Nancy E. Biggerstaff, a/k/a Nancy Biggerstaff, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Nancy E. Biggerstaff, a/k/a Nancy Biggerstaff, was personally served with Summons and Complaint on August 5, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Nancy E. Biggerstaff, a/k/a Nancy Biggerstaff, for the principal sum of \$498.16 (less the sum of \$375.00 which has been paid), plus the accrued interest of \$55.51 as of May 10, 1980, plus interest at 7% from May 10, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of \$498.16 (less the sum of \$375.00) from the date of Judgment until paid.

UNITED STATES OF AMERICA, and ANITA M. VAUGHN,	)	SEP 15 1981
Special Agent, Internal Revenue Service,	)	Jode O. Stylen of M. S. DISTERN CHURT
Petitioners,	)	or oralization of that
V.	) NO. 81-C-366-E	
ZALES JEWELERS and ALAN SEALS, District Manager,	)	
Respondents.	)	

### ORDER OF DISMISSAL

Upon application of the United States of America, the records so summoned have been received by the United States of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this case be dismissed.

Dated this 147th Layof September, 1981.

DANNY RAY LAMB, Petitioner, vs. No. 81-C-100-E FILED A. I. MURPHY and THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, SEP 1 5 1981 20 Respondents. Jack : Silver, Uleric U.S. DISTRICE COURT

### ORDER

The Court has before it for consideration a Petition for Writ of Habeas Corpus filed by Petitioner Danny Ray Lamb. Petitioner is presently incarcerated at the Oklahoma State Peniteniary in McAlester, Oklahoma.

Commencing on February 3, 1976, Petitioner was tried by a jury and convicted in the District Court of Tulsa County, State of Oklahoma, of robbery with firearms after former conviction of a felony in case number CRF-75-2329. On February 18, 1976, the Honorable Margaret Lamm, District Judge, assessed Petitioner's punishment at thirty (30) years imprisonment in accordance with the recommendation of the jury.

Petitioner subsequently appealed his case to the Oklahoma Court of Criminal Appeals (case number F-76-622) alleging that the trial court had committed reversible error by permitting the state to use a transcript of the preliminary hearing testimony given by a state's witness who was not present for the trial. On January 3, 1977, the Oklahoma Court of Criminal Appeals affirmed Petitioner's sentence. See Lamb v. State, 560 P.2d 583 (Okl.Cr. 1977).

Petitioner then filed on November 7, 1977, pursuant to Okla.Stat. Ann. tit. 22, § 1080 et seq. (1971), an application for post-conviction relief in the District Court of Tulsa County. That application was denied on March 29, 1978. Petitioner sought appellate review and on May 5, 1978, the Oklahoma Court of Criminal Appeals entered its Order affirming the District Court's denial of post-conviction relief.

Petitioner Lamb then filed a second application for post-conviction relief in the District Court of Tulsa County, Oklahoma. A hearing was held on February 11, 1981. The Court, through Judge Jay Dalton, held that Petitioner's application was barred by the doctrine of res judicata and that the court lacked subject matter jurisdiction under the provisions of Okla.Stat.Ann. tit. 22, § 1086, which provides:

All grounds for relief available to an applicant under this Act [Post-conviction Procedure Act] must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the Court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.

Petitioner seeks federal habeas corpus review based upon the following allegations. Petitioner alleges that improper comments were made by the prosecutor during his trial and that improper testimony was received pertaining to prior crimes, activities and arrests; that he was denied his Fifth and Sixth Amendment rights by reason of the unfamiliarity of his counsel with the case and counsel's lack of time to prepare a defense; and that the trial court failed to properly instruct the jury. It is apparent to the Court from reviewing the file that Petitioner has in fact exhausted his state court remedies.

Petitioner instituted this action on March 12, 1981, in the United States District Court for the Eastern District of Oklahoma. The case was subsequently transferred to the Northern District of Oklahoma. On April 2, 1981, this Court ordered the Respondents to respond to Petitioner's fequest for a Writ of Habeas Corpus. Said response has been duly received, along with a complete record of earlier state proceedings in this matter. The Respondents contend that the writ should be denied because of Petitioner's failure to raise the issues in accordance with state procedural requirements and failure to show both cause for non-compliance and actual prejudice resulting from the alleged constitutional violations. The Court has reviewed the entire file and concludes that the case is now ready for dispositive ruling.

In <u>Townsend v. Sain</u>, 372 U.S. 293 (1963), the Supreme Court laid down the test applicable to a determination of whether the Petitioner was entitled to an evidentiary hearing in his habeas corpus action:

We hold that a federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances: if (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing. 372 U.S. at 313.

In reviewing the record, under the test of <u>Townsend</u>, <u>supra</u>, the Court finds that an evidentiary hearing is not necessary in this case.

The critical issue to be decided by the Court in this case is whether the negligent failure of Petitioner or his attorney to raise constitutional claims in a timely fashion, as required by state procedure, in state post-conviction proceedings bars Petitioner from seeking relief in a federal habeas corpus action.

In Faye v. Noia, 372 U.S. 391 (1963), the Supreme Court held that a state procedural bar arising from a failure to appeal would not prevent federal habeas corpus review unless a "deliberate bypass" of state remedies had occurred. 372 U.S. at 438. This holding represents a major exception to the normal rule that a separate adequate and independent state ground for decision will bar review of the federal questions in a case. Fox Film Corp. v. Muller, 296 U.S. 207 (1935); Cole v. Stevenson, 620 F.2d 1055, 1059 (Fourth Cir. 1980).

The "deliberate bypass" rule was modified by the Supreme Court in the case of Wainwright v. Sykes, 433 U.S. 72 (1977). In that case, the Court held that, for federal habeas purposes, the alleged deprivation of a federal constitutional right during the course of a state criminal proceeding is waived by the defendant's failure to

raise the issue in accordance with the state's procedural requirements unless the failure was justified by cause and unless the deprivation had worked to the actual prejudice of the defendant in the state proceeding. 433 U.S. at 87. This "cause and prejudice" test has been applied by other courts to bar habeas corpus actions. See Parton v. Wyrick, 614 F.2d 154, 157 (Eighth Cir. 1980); Wright v. Bombard, 638 F.2d 457, 460 (Second Cir. 1980), cert. denied 101 S.Ct. 1400 (1981).

The Supreme Court's holding in <u>Wainwright</u>, <u>supra</u>, has recently been reaffirmed in <u>Sumner v. Mata</u>, \_\_\_\_\_\_\_U.S. \_\_\_\_\_\_, 101 S.Ct. 764, 769 (1981), where the court stated:

"[I]f the state appellate court here had declined to rule on the ... issue because it had not been properly raised in the trial court, the federal court would have been altogether barred from considering it absent a showing of 'cause' or 'prejudice'."

The Tenth Circuit has adopted the "cause and prejudice" test in cases where a Petitioner failed to follow the state's contemporaneous objection rule, but has not faced the issue in a case such as the one at bar, in which a Petitioner has been barred by failure to follow the state's post-conviction procedure. See Soap v. Carter, 632 F.2d 872, 876 (Tenth Cir. 1980).

In the hearing held in Tulsa County District Court upon Petitioner's second application for post-conviction relief, the District Court found that Petitioner had failed to show sufficient cause to invoke the jurisdiction of the court, as required by Okla.Stat.Ann. tit. 22, § 1086. The Court made the following statements:

The Court further finds that Petitioner Lamb has heretofore been provided not only a direct appeal from his conviction herein, but also a direct appeal from denial of his first application for post-conviction relief, both by virtue of appeals to the Court of Criminal Appeals of the State of Oklahoma. The Court finds that Petitioner Lamb is bound by the doctrine of res judicata upon the instant or subsequent application for post-conviction relief. The Court finds that such propositions as Petitioner attempts to bring before the Court at this time have either been previously and finally adjudicated against Petitioner Lamb herein, or which issues could or should have been raised by him upon either his direct appeal from conviction, or upon his direct appeal from denial of his first application for

post-conviction relief. The Court further notes that, notwithstanding Petitioner's assertions herein, Petitioner now brings forward insufficient cause to constitute good cause shown, in requesting the Court to rule that res judicata should be avoided herein. The Court does find that none of the grounds presently asserted by Petitioner or those which would constitute an intervening change in case law, nor the grounds which were known at the time of his initial conviction and appeal, or at the time of his second appeal from denial of post-conviction relief. [citations omitted]. (see record of case CRF-75-2329, page 80.)

It is clear to this Court that the State Court had adequate grounds upon which to make this ruling. Absent a showing of cause or prejudice, this Court cannot interfere with the decision of the State Court, based as it is upon an adequate independent state procedural ground. Wainwright v. Sykes, supra; Summer v. Mata, supra. Furthermore, it is the opinion of this Court that Petitioner has not, in fact, made a sufficient showing of cause or prejudice in this case. To allow Petitioner to establish cause because of his dissatisfaction with the work of his trial and appellate attorneys would effectively eliminate the state's procedural requirements for post-conviction relief. Similarly, to infer prejudice simply because of the failure to raise all conceivable legal grounds of error at the appropriate time would allow a virtually unfettered right to pursue habeas corpus in the federal courts, without regard for the state's legitimate needs for procedural rules and standards.

After a careful review of the entire record in this matter, and bearing in mind the applicable law, this Court is of the opinion that, pursuant to <u>Wainwright v. Sykes</u>, <u>supra</u>, Petitioner's application should be denied because of Petitioner's failure to comply with the State of Oklahoma's procedural requirements for post-conviction relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, should be and the same hereby is denied.

It is so Ordered this  $\sqrt{5^{2}}$  day of September, 1981.

UNITED STATES DISTRICT JUDGE

BOBBY D. CARTER,	)
Plaintiff,	
VS.	) No. 80-C-549-E
PATRICIA ROBERTS HARRIS,	SEP 15 1981
Secretary of Health, Education and Welfare,	brk C. Siver, Clark U. S. Sigtaint unurt
Defendant.	· )

#### JUDGMENT

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the Defendant, Secretary of Health, Education and Welfare (Secretary) and after due proceedings had, and upon examination of the pleadings and record filed herein, including the briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed herein of this date that the final decision of the Secretary is supported by substantial evidence as required by the Social Security Act, and should be affirmed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the final decision of the Secretary should be and the same hereby is affirmed.

It is so Ordered this \_\_\_\_\_\_day of September, 1981.

BAPTIST HEALTH CARE CORPORATION, d/b/a MIAMI BAPTIST HOSPITAL, an Oklahoma Non-Profit Corporation,

Plaintiff,

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PATRICIA ROBERTS HARRIS, in her Official Capacity as Secretary of Health, Education and Welfare,

Defendant.

SEP 15 1981 mm

11. S. DISTRICT COURT

JUDGMENT

No. 79-C-588-E

The Court has for consideration the Findings and Recommendations of the Magistrate filed herein on August 26, 1981. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that Judgment be entered for the Plaintiff reversing the decision of the Administrator; that Plaintiff be reimbursed in the sum of \$78,573.00; that the case be and hereby is remanded to the Secretary and that full Medicare reimbursement claimed by Plaintiff including interest be paid in accordance with 42 U.S.C. § 139500(f)(2) and that Plaintiff recover its costs.

It is so Ordered this  $15^{-74}$  day of September, 1981.

# IN THE UNITED STATES DISTRICT COURT FOR THE

NURTHERN DISTRICT OF OKLAHOMA

ALAN	WEST,	)
	Plaintiff,	)
	·	′

SEP 1 5 1981

Section of the Chair U. S. DISTALLI COURT

TRANS WORLD AIRLINES, INC.,

Defendant.

v.

No. 80-C-312-E

# ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 14 day of Sept \_\_, 1981, the above styled and numbered cause coming on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma, upon the Stipulation for Dismissal With Prejudice of the plaintiff and the defendant herein; and the Court having examined the pleadings and being well and fully advised in the premises, is of the opinion that said cause should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by the Court that the above styled and numbered cause be and the same is hereby dismissed with prejudice to a future action, with each party to bear their own costs.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED:

ANDREW DALTON, JR. ATTORNEY FOR PLAINTIFF 1437 S. Main - #302 Tulsa, OK 74119

RUSSELL B. HOLLOWAY HOLLOWAY DOBSON HUDSON & BACHMAN ATTORNEYS FOR DEFENDANT 1100 Continental Savings - 101 Park Avenue Oklahoma City, OK 73102

(405) 235-8593

UNITED STATES OF AMERICA,	1 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1
Plaintiff,	
Vs.	) CIVIL ACTION NO. 80-C-237-E
PATRICIA A. HOLMES,	) )
Defendant.	)

### DEFAULT JUDGMENT

This matter comes on for consideration this 1474 day of September, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Patricia A. Holmes, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Patricia A. Holmes, was personally served with Summons and Complaint on May 12, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Patricia A. Holmes, for the principal sum of \$1,170.00 (less the sum of \$360.00 which has been paid), plus the accrued interest of \$222.35 as of July 18, 1979, plus interest at 7% from July 18, 1979, until the date of Judgment, plus interest at the legal

rate on the principal sum of \$1,170.00 (less the sum of \$360.00) from the date of Judgment until paid.

UNITED STATES OF AMERICA

FRANK KEATING United States Attorney

PHILARD L. ROUNDS, JR. Assistant United States Attorney

b

SEP 15 1981

		NORTHERN	DISTRICT	$\mathbf{OF}$	OKLAHOMA			
UNITED S	STATES (	OF AMERICA,	)					. ,
		Plaintiff,	)					
vs.			)	CI	VIL ACTION	NO.	80-C-10-C	

UNITED STATES DISTRICT COURT FOR THE

DEFAULT JUDGMENT

Defendant.

JUDY K. SHIPP.

This matter comes on for consideration this day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Judy K. Shipp, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Judy K. Shipp, was personally served with Summons and Complaint on January 30, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Judy K. Shipp, for the principal sum of \$1,080.00 (less the sum of \$660.00 which has been paid), plus the accrued interest of \$134.38 as of October 20, 1979, plus interest at 7% from October 20, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,080.00 (less the sum of \$660.00) from the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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*****	
UNITED STATES OF AMERICA,	3.12%
Plaintiff,	U. S. O. M
vs.	CIVIL ACTION NO. 79-C-519-E
EVETTE BROOKS, (now) EVETTE McGRIFF,	) ) )
Defendant.	}

## DEFAULT JUDGMENT

This matter comes on for consideration this \_\_\_\_\_\_ day of September, 1981, the Plaintiff appearing by Frank Keating, United States Attorney, through Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Evette Brooks, (now) Evette McGriff, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Evette Brooks, (now) Evette McGriff, was personally served with Summons and Complaint on December 18, 1979, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Evette Brooks, (now) Evette McGriff, for the principal sum of \$1,660.74 (less the sum of \$500.00 which has been paid), plus the accrued interest of \$373.07 as of August 9, 1979, plus interest at 7% from August 9, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,660.74 (less the sum of \$500.00) from the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Ser - 1981

Jack C. Silver, Clerk U. S. DISTRICT COURT

WILLIAM F. BAILEY, 711 West Wallace DeQueen, Arkansas 71832,

Plaintiff,

Vs.

Civil Action No. 81-C-189-E

DeQUEEN and EASTERN RAILROAD, a corporation, P.O. Box 32 DeQueen, Arkansas 71832,

Defendant.

# JOINT APPLICATION FOR DISMISSAL

COMES NOW THE plaintiff, William F. Bailey, and the defendant , DeQueen and Eastern Railroad, and moves the Court to dismiss the above entitled cause for the reason that the controversy has been settled.

HUBBELL, LANE & SAWYER

John, T. Peak James H. Bell

BY:

& Light Building, Powe 25th Floor

106 West 14th Street

Kansas City, Missouri

(816) 221-5666

RØBERT E. MARTIN

410 Beacon Building

Tulsa, Oklahoma (918) 587-7234

ATTORNEYS FOR PLAINTIFF

FILED

SEP 15 1981

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DENNIS RYAN

of BENEFIELD, RYAN, CAIN 2700 City National Bank Tower Oklahoma City, Oklahoma 73102

(405)  $236-16\overline{2}6$ 

ATTORNEY FOR DEFENDANT

# ORDER OF DISMISSAL

Upon the application of the plaintiff and defendant and for good cause shown, the above entitled cause of action is hereby dismissed with prejudice.

IT IS SO ORDERED this //f day of

DISTRICT

LARRY L. DULLYE and PATRICIA
LEE DULLYE,

Plaintiffs,

VS.

NO. 80-C-359-E

VINCENT J. PALUMBO and INITA L.
PALUMBO; and GLENN WARNER,

Defendants,

VS.

SEP 15 1961

Lack Lourn, And Jack Lo

#### JUDGMENT

The Court, having this date filed its Findings of Fact and Conclusions of Law after non-jury trial of this case, holds that the Plaintiffs, Larry L. Dullye and Patricia Lee Dullye, should have and recover judgment herein against Defendant Vincent J. Palumbo and Inita L. Palumbo and Defendant-Stakeholder Jack Heskett as hereinafter stated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Defendant-Stakeholder Jack Heskett pay to Plaintiffs Larry L. Dullye and Patricia Lee Dullye the sum of \$15,000.00, together with interest accumulated on said sum while in his possession.

IT IS FURTHER ORDERED, consistent with the ruling by the Court during the non-jury proceedings of the case, that judgment in the form of directed verdict be and is hereby entered in favor of the Defendant Glenn Warner as to Plaintiffs, Defendants and the Stakeholder.

IT IS FURTHER ORDERED that Plaintiffs Larry L. Dullye and Patricia Lee Dullye be awarded their costs herein expended as against Defendants Vincent J. Palumbo and Inita L. Palumbo.

It is so Ordered this 15th day of September, 1981.

MINTIE B. STAUSS,	)	
Plaintiff,	)	
VS.	)	NO. 81-C-69-C
TRANS WORLD AIRLINES, I	NC.,	SEP 14 1981 PT
Defendant	)	tack C. Silver, Clerk
	JUDGMEN	a miothirt rolls i

This action came on for trial before the Court and a jury, Honorable H. Dale Cook, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, finding for Defendant against Plaintiff.

It is ORDERED and ADJUDGED that judgment be entered for Defendant, TRANS WORLD AIRLINES, and against the Plaintiff, MINTIE B. STAUSS.

DATED AT Tulsa, Oklahoma, this day of September, 1981.

UNITED STATES DISTRICT JUDGE

AMPLICA INC., a corporation,

Plaintiff,

Vs.

MARCENE KELLEY, d/b/a SAT VISION, INC.,

Defendant,

Case No. 81-C-121-C

and

SatVision, INC., a corporation,

Additional Defendant.

FILED

CHE 1 4 1981

Jack C. Silver, Clerk U. S. DISTRICT COURT

# JOURNAL ENTRY OF JUDGMENT

NOW ON this day of September, 1981, the aboveentitled matter came on regularly for hearing. Plaintiff appeared
by and through its attorneys, Ungerman, Conner & Little; Defendant
appeared by and through its attorneys, Pitcher, Castor & Hartley.
Thereupon, the Court found that it had jurisdiction in the premises
and that the Defendant, SatVision, Inc., a corporation, had been
duly served with summons and the Court had jurisdiction over the
parties and the subject matter of the cause.

Thereupon, the Court being fully advised in the premises found that the Defendant is indebted to the Plaintiff in the principal sum of \$50,173.23, with interest thereon at the rate of 10% per annum from December 8, 1980 until judgment and thereafter at the rate of 12% per annum until paid. The Court further finds that the Complaint of Plaintiff as it relates to the Defendant, MARCENE KELLEY, individually, should be dismissed.

LAW OFFICES
INGERMAN,
CONNER,
LITTLE,
UNGERMAN &
GOODMAN

MIDWAY BLDG. 2727 EAST 21 ST. SUITE 400

P. O. BOX 2098 TULSA, OKLAHOMA 74101

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff's action against the Defendant, MARCENE KELLEY, individually, be dismissed.

APPROVED:

UNGERMAN, CONNER & LITTLE

THOMAS J. ELKINS, Attorney for Plaintiff

PITCHER, CASTOR & HARTLEY

JOT HARTLEY Attorney for Defendants.

UNITED STATES OF AMERICA, and ANITA M. VAUGHN, Special Agent, Internal Revenue Service,

Petitioners,

vs.

NO. 81-C-367-C

CREDITHRIFT OF AMERICA, INC., and JOHN SPAIN, Manager,

Respondents.

FILED

SEP 14 1981

Jack C. Silver, Clerk U.S. DISTRICT COURT

# ORDER OF DISMISSAL

Upon application of the United States of America, the records so summoned have been received by the United States of America in accordance with the Court's Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this case be dismissed.

Dated this /4 of September, 1981.

UNITED STATES OF AMERICA,	)
Plaintiff,	<u> </u>
vs.	) CIVIL NO. 81-C-360-C
KAREN R. ROACH,	) 

Defendant.

14198

Jack C. Silver, Clerk U. S. DISTRICT COURT

## AGREED JUDGMENT

This matter comes on for consideration this 14 day \_, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Karen R. Roach, appearing pro se.

The Court being fully advised and having examined the file herein finds that Defendant, Karen R. Roach, was personally served with Summons and Complaint on July 21, 1981.

The parties agree and consent that Judgment may be entered against the Defendant, Karen R. Roach, in the amount of \$804.00 (less the sum of \$100.00 which has been paid).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Karen R. Roach, for the principal sum of \$804.00 (less the sum of \$100.00 which has been paid), plus the accrued interest of \$114.18 as of March 4, 1980, plus interest at 7% per annum from March 4, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of \$804.00 from the date of Judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING

United,

PHILARD L. ROUNDS, W. Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT CODR

SEP 1 4 1981

SAINT FRANCIS HOSPITAL, INC., an Oklahoma Non-Profit Corporation,)

Plaintiff,

Jack . Sliver, Clerk
U. S. DISTRICT COHRT

vs.

No. 79-C-184-E

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Defendant.

# MEMORANDUM OPINION AND ORDER

This matter is before the Court on the parties' stipulation of facts, and the motion of Plaintiff to reverse the decision of the Defendant Secretary, and the motion of Defendant to affirm the decision, which motions will be treated by the Court as cross-motions for summary judgment. The Court, having reviewed the file, finds that there are no disputes as to any material facts herein, and that summary disposition of this matter is appropriate.

This is an action seeking judicial review of a final decision of the Secretary that certain expenditures by Plaintiff were not reimbursable under the Medicare Act, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq. Plaintiff seeks this review of the Secretary's decision pursuant to 42 U.S.C. § 139500(f). The expenditure involved in this matter is Plaintiff's interest expense on a portion of the sum of \$15,000,000.00. Plaintiff was denied reimbursement of a portion of that annual interest expense on the ground that a portion of the \$15,000,000.00 loan was not "necessary", it being the Defendant's position that a portion of the \$15,000,000.00 was diverted to finance a medical office building. Such an expenditure was deemed to be unrelated to patient care, and therefore unnecessary.

The Plaintiff herein is an Oklahona non-profit corporation, qualified for tax exempt status under I.R.C. § 501(c)(3), and is presently the largest general hospital in Tulsa, Oklahoma. It was originally constructed through the efforts of the William K. Warren Foundation, a private foundation, and was completed in 1960. Subsequently two construction programs, known as Phase II and Phase

III, were commenced in 1966 and 1973 respectively, resulting in the hospital's present size. The financing of Phase II is involved in this controversy. Phase II consisted of the addition of a new wing consisting of seven stories, and the addition of two stories to the existing structure, as well as the expansion of the power plant because of the increase in space.

At the time that contracts for Phase II were executed, the estimated cost of construction and movable equipment necessary to utilize the new space was \$15,388,900.00. Due to a number of change orders, and the addition of a psychiatric unit, however, the actual cost of Phase II was over \$18,000,000.00.

Plaintiff intended to finance Phase II through the use of unexpended plant funds, charitable contributions, and a bond program. The plant fund, however, had been nearly depleted, as it had been used to pay \$627,140.00 of pre-groundbreaking costs (not included in the construction cost estimate of \$15,388,900.00), and no really significant contributions were expected (contributions from sources other than the Warren Foundation averaged approximately \$10,000.00 per year during the time). The bulk of the financing was, therefore, expected to come from the bond program.

As of June 30, 1966, the Plant Fund had slightly more than \$400,000.00 in it; since the estimated cost of construction was at the time \$15,388,900.00, Plaintiff's management determined that it would need to borrow \$15,000,000.00.

The loan of \$15,000,000.00 was negotiated by William K.

Warren with the Metropolitan Life Insurance Company. Mr.

Warren was able to negotiate the very favorable interest rate of 5 7/8%, through the use of his personal influence and by arranging for the Foundation to pledge \$18,000,000.00 in marketable securities as collateral for the loan. The loan was arranged in the form of a bond issue with six closings between January 1967 and April 1968.

In 1965, prior to the transaction just described, the Warren Foundation decided to build a medical office building adjacent to St. Francis Hospital, to be known as the Warren Professional Build-

ing. The apparent purpose of this building was to create additional support for Plaintiff by encouraging physicians to locate their offices near the hospital and to become familiar with its services. Prior to the commencement of construction, the Warren Foundation created the Warren Research Center to own the professional building, but due to tax considerations not relevant herein, the ownership of the building was transferred to the Warren Professional Building Corporation in late 1967, and further references made herein to the Research Center should be taken to include its successor.

In 1967, the professional building was near to completion, but the Research Center did not have cash available to pay for the costs of construction for the first part of that year. At this same time, Plaintiff received the funds from the initial bond closing. Apparently Plaintiff and the Research Center entered into an agreement to loan the initial bond closing receipts to the Research Center, because these initial receipts were not immediately necessary to meet the construction costs of Phase II. Pursuant to this agreement, Plaintiff loaned \$2,515,000.00 to the Research Center by a series of demand notes executed during the first six months of 1967, and also loaned approximately \$500,000.00 to the Research Center on open account during the summer of 1967.

In the fall of 1967, an additional agreement was evidently reached, whereby Plaintiff would cancel the indebtedness of the Research Center as to accounts receivable, notes receivable and interest accrued, and would tender a cash consideration, in return for which the Research Center would transfer to Plaintiff all of the outstanding stock in the professional building. The net result of this transaction was the acquisition by Plaintiff of the professional building for a total purchase price of \$3,106,755.00. There is no allegation that this price was excessive, and there is no claim that the Plaintiff's net worth was reduced by the transaction.

At this point, the parties' viewpoints diverge. The Defendant's position being that the loan of Phase II construction funds to the Research Center and the subsequent transfer of stock in the pro-

fessional building resulted in an investment, and that the interest expense claimed by Plaintiff on approximately \$3,000,000.00 is not a necessary and therefore reimbursable cost under the applicable regulations. The Plaintiff, on the other hand, contends that the Defendant erroneously views only part of a whole. That is, it is Plaintiff's position that the agreement to loan funds to the Research Center was reached only after the Foundation had pledged that it would make sufficient funds available to the Hospital to cover its acquisition of the Professional Building and that such funds would be made available in time to cover the upcoming construction costs of Phase II. Plaintiff contends that these contributions from the Foundation paid for the acquisition of the stock of the Professional Building, and therefore freed the bond proceeds that had been invested in the Professional Building, making those proceeds once again available to pay for Phase II construction costs. The intent of the transaction involving the Professional Building, Plaintiff asserts, was to donate the Professional Building to the Plaintiff hospital.

Although somewhat oversimplified, this controversy basically revolves around the question of whether a portion of the \$15,000,000.00 loan became an "investment" when it temporarily came to rest in the Professional Building stock, or whether it retained its character as a necessary (and therefore reimbursable) borrowing notwithstanding this stopover.

The Intermediary disallowed the interest expense on that portion of the bond proceeds that had been invested in the Professional Building stock. Plaintiff appealed the Intermediary's determination to the Provider Reimbursement Review Board (PRRB), pursuant to 42 U.S.C. § 139500, and 42 C.F.R. §§ 405.1801 et seq. The PRRB determined that Plaintiff's borrowing the \$15,000,000.00 was necessary, that all proceeds were ultimately used for Phase II construction, and that the Intermediary's disallowance of interest expenses related to a portion of the bond proceeds was improper, reversing the Intermediary's decision.

The Defendant reviewed the decision of the PRRB, pursuant to

42 U.S.C. § 139500(f), concluding that as a result of the transaction involving the stock in the Professional Building, the loan of \$2,515,000.00 resulted in an investment and that the interest expense claimed by Plaintiff on the \$2,515,000.00 loan was not a "necessary" cost under the applicable statutes and regulations, thereby reversing the decision of the PRRB.

The issue presented in this matter, is whether the entire amount of interest paid by St. Francis on its 1966 bonds is an allowable cost under the applicable regulations for purposes of computing Medicare reimbursement.

The final administrative decision on this question is set forth in the Findings of Fact and Conclusions of Law in the Administrator's Decision, which are as follows:

#### FINDINGS OF FACT

- 1. The amount in controversy exceeds \$10,000 for each of the cost reporting periods ending June 30, 1973, 1974, 1975 and 1976.
- 2. In 1960, St. Francis Hospital, a 275-bed facility, was financed and constructed by the William K. Warren Foundation.
- 3. In 1965, the William K. Warren Foundation began construction of the Warren Professional Building, a doctors' office building adjacent to the Provider, which was completed in July of 1967.
- 4. On December 15, 1966, a bond purchase agreement authorized the Provider to issue \$15,000,000 aggregate principle amount of its 5-7/8% First Mortgage Collateral Trust Bonds due January 1, 1983.
- 5. In 1967 and 1968, to finance construction of a 360-bed addition to the hospital facility, referred to as the Phase II construction plan, the Provider issued bonds in the amount of \$15,000,000, at an interest rate of 5-7/8%.
- 6. Immediately preceeding Phase II construction, the Provider's plant fund held approximately \$421,000 in liquid assets. The general fund held \$76,000, approximately enough to pay operating expenses for 15 days.
- 7. As collateral for the \$15,000,000 loan, the William K. Warren Foundation pledged \$18,000,000 in marketable securities.
- 8. The Bond Purchase Agreement between St. Francis Hospital, William K. Warren Foundation, and Metropolitan Life Insurance Company had required that the proceeds from the issuance and sale of the bonds be applied to the payment of the Phase II construction cost.

- 9. The Provider did not adhere to this restriction.
- 10. The William K. Warren Research Center was established to own the Warren Professional Building, Incorporated.
- 11. In the early part of 1967, the William K. Warren Research Center borrowed \$2,515,000, at an interest rate of 6% from the Provider to finance construction of the Warren Professional Building.
- 12. The stated purpose of both the Research Center and Warren Professional Building Corporation was to support and benefit the Provider.
- 13. The Warren Professional Building is a doctors' office building and is not related to rendering health care to Medicare Part A hospital patients.
- 14. On November 10, 1967, the Provider obtained all issued and outstanding stock (1,000 shares) of the Warren Professional Building Corporation in exchange for notes receivable (\$2,515,000), accrued interest receivable (\$110,183.78), and cash (\$396,570.83).
- 15. As a result of this transaction, the loan of \$2,515,000 resulted in an investment.
- 16. The Provider claimed Medicare reimbursement for interest on bond proceeds loaned for the construction of the Warren Professional Building, the medical office building adjacent to the Provider's facility, as part of its costs for its cost years ending June 30, 1973, 1974, 1975 and 1976.

#### CONCLUSIONS OF LAW

- 1. The interest expense claimed by the Provider on the \$2,515,000 loan is not a necessary cost actually incurred in the efficient delivery of needed health services under Section 1861(v)(1)(A) of the Social Security Act, as Amended, [42 USCA 1395x].
- 2. Interest expense claimed by the Provider for that part of the loan which financed construction of the Warren Professional Building is not necessary under 42 CFR 405.419(b)(2)(i) because it was not incurred on a loan made to satisfy a financial need of the Provider.
- 3. This interest expense claimed by the Provider is not necessary because the interest claimed is on a loan which resulted in an investment, which is not considered necessary under 42 CRF 405.419(b)(2)(i).
- 4. This interest expense claimed by the Provider is not necessary under 42 CFR 405.419(b)(2)(ii) because it was not incurred on a loan made for a purpose reasonably related to patient care.
- 5. This interest expense claimed by the Provider is not a necessary and proper cost incurred in rendering patient care services to program beneficiaries as required by 42 CFR 405.451(a).

- 6. This interest expense claimed by the Provider is not appropriate and helpful in developing and maintaining patient care facilities and activities as required by 42 CFR 405.451(b)(2).
- 7. The disputed costs may not be considered reimbursable by Medicare for the cost year at issue under 42 CFR 405.402(a).

#### DECISION

The decision of the Provider Reimbursement Review Board is reversed. Interest expense on borrowed funds used for an investment is not an allowable cost.

The Court will initially address Plaintiff's arguments relating to the level of scrutiny which should be applied to the Administrator's decision. That is, what is the proper scope of this Court's review? The Plaintiff argues that the substantial evidence standard is inapplicable in this instance, and that deference to the Administrator's decision is neither required nor warranted, while Defendant urges the "substantial evidence" test is applicable under 42 U.S.C. \$ 139500(f)(1) and 5 U.S.C. \$ 706. The Court must reject the argument that simply because the Administrator chose to reject the conclusion of the PRRB, his decision must be viewed with more than the ordinary care. The PRRB's decision is no more than an interim decision of an agency, and as such is entitled to no more weight on review than any interim agency decision where the final decision of the Secretary is controlling, see Homan & Crimen, Inc. v. Harris, 626 F.2d 1201 (Fifth Cir. 1980). In Homan & Crimen, the Court, in speaking to this same contention said:

The argument that the court should recognize the expertise of the members of the PRRB must be met with the assumption that those persons within the agency who assisted the Secretary in a contrary decision must be regarded as being equally expert.

626 F.2d at 1205. A similar argument was raised in American Medical International, Inc. v. Secretary of H.E.W., 466 F.Supp. 605 (D.D.C. 1979), where the court said:

Plaintiffs, however, suggest that this Court deviate from the normal rule of deference in this case because the decision of the Provider Reimbursement Review Board differed in substantial part from the Secretary's final decision. As noted, review by this Court shall be "pursuant to the applicable provisions [of the Administrative Procedure Act]." 42 U.S.C.

§ 139500(f). It is well settled that, under the APA, final responsibility for rendering the decision lies in the agency itself, not in any subordinate hearing officers. This is because it is the agency, not any subordinate officers such as the Provider Reimbursement Review Board, that is charged with the responsibility for implementing and administering the agency's program. (citations omitted) As pointed out recently by the Court of Appeals for this Circuit,

When final decisionmaking authority is vested in an administrative tribunal, the determinations of that body, and not the mere recommendations of its examiner, are the principal concern of a reviewing court ... And when the agency's final determination is adequately substantiated, that decision must prevail notwithstanding the defensibility of the examiner's view.

Williams v. Bell, 190 U.S.App.D.C. 343 at 349, 587 F.2d 1240, at 1246 (D.C.Cir. 1978) (footnotes omitted). Therefore, a difference of opinion between the Provider Reimbursement Review Board and the Administrator in this case, while considered as part of the whole record, does not require this Court to abandon the usual principle of deference to the expertise of an agency.

466 F.Supp. at 611-612 (footnotes omitted).

Similarly, the Court must also reject Plaintiff's contention that the percentage of reversal by the Administrator of PRRB decisions favorable to Provider calls for greater scrutiny of the Administrator's decision. In addressing this statistical argument, the court in Medical Center of Independence v. Harris, 628 F.2d 1113 (Eighth Cir. 1980) stated:

Statistics adduced by MCI reveal that between 1975 and 1978 the Secretary (or her delegate) reversed over forty percent of PRRB decisions favorable to providers; by contrast, not a single decision adverse to a provider was reversed.

This statistical record is troubling. Nonetheless, MCI's arguments are more appropriately addressed to Congress, which has responsibility for establishing administrative review procedures and can take cognizance of long-range patterns of decision-making. Our focus is necessarily confined to the case before us. We note, moreover, that our standard of review is unaltered by the fact that an administrative agency has reversed the decision of its hearing board. The question remains in each case whether substantial evidence in the record as a whole supports the

final administrative determination.
Universal Camera Corp. v. NLRB, 340
U.S. 474, 496, 71 S.Ct. 456, 468,
95 L.Ed. 456 (1951); FCC v. Allentown
Broadcasting Co., 349 U.S. 358, 36364, 75 S.Ct. 855, 859, 99 L.Ed. 1147
(1955); Fairfax Hospital Ass'n, Inc.
v. Califano, 585 F.2d 602, 610-12
(4th Cir. 1978); American Medical
International, Inc. v. Sec. of HEW,
466 F.Supp. 605, 611-12 (D.D.C. 1979).

628 F.2d at 1117.

The standard of review to be applied in this case is governed by "the applicable provisions under chapter 7 of Title 5 [5 U.S.C. §§ 701-707]" 42 U.S.C. § 139500(f)(1). The reviewing Court, therefore, must hold unlawful and set aside agency action, findings and conclusions found to be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, " 5 U.S.C. § 706(2)(A), or "unsupported by substantial evidence," 5 U.S.C. 706(2)(E). In this case, the question is whether there exists in the record as a whole substantial evidence supporting the final administrative determination; "substantial evidence" is something less than the weight of the evidence, focusing instead on the adequacy of the evidence to support the agency's final conclusion, see, e.g., Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018 (1966); Universal Camera Corp. v. N.L.R.B., 340 U.S. 479, 71 S.Ct. 456 (1951); White Memorial Medical Center v. Schweiker, 640 F.2d 1126 (Ninth Cir. 1981); Goleta Valley Community Hosp. v. Schweiker, 647 F.2d 894 (Ninth Cir. 1981); Pacific Coast Medical Enterprises v. Harris, 633 F.2d 123 (Ninth Cir. 1980); Medical Center of Independence v. Harris, supra; Homan & Crimen, Inc. v. Harris, supra; Columbus Community Hosp., Inc. v. Califano, 614 F.2d 181 (Eighth Cir. 1980); United States v. Fairlane Memorial Convalescent Homes, Inc., 501 F. Supp. 863 (E.D. Mich. 1980); American Medical International, Inc. v. Secretary of H.E.W., supra. The scope of review to be applied here is, under the applicable law, not as broad as is urged by Plaintiff; the Court may not substitute its judgment for the Administrator's:

The court "must 'consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear

error of judgment. ... Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency.'" Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 285, 95 S.Ct. 438, 442, 42 L.Ed.2d 447 (1974), quoting Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416, 91 S.Ct. 814 28 L.Ed.2d 136 (1971). See also K. C. Davis, Administrative Law of the Seventies \$\$ 29.00-.01(1976).

Pacific Coast Medical Enterprises v. Califano, 440 F.Supp. 296, 303 (C.D.Cal. 1977), aff'd as modified and remanded, 633 F.2d 123 (Ninth Cir. 1980).

The Court agrees with Plaintiff, however, that the review in this case must be based solely upon the Defendant's articulated reasons in support of the action taken, based upon the existing record. Post hoc rationalization for the Administrator's decision must be disregarded by the Court, and the decision must stand or fall on its own:

[W]hile the Commission's brief explained why the evidence presented by petitioners was inadequate, post hoc rationalizations are no substitute for a clear explanation by the agency of the reasons for decision in the opinion itself.

Campbell Sixty-Six Express, Inc. v. I.C.C., 603 F.2d 1012, 1014 (D.C. Cir. 1979); see also Burlington Truck Lines v. United States, 371 U.S. 156, 83 S.Ct. 239 (1962); SEC v. Chenery Corp., 332 U.S. 194, 67 S.Ct. 1575 (1947); Ace Motor Freight, Inc. v. I.C.C., 557 F.2d 859 (D.C. Cir. 1977).

Under the applicable law, only those reasonable costs related to the care of Medicare patients are reimbursable, 42 U.S.C. § 1395x(v)(1)(A). Interest expenses on both current and capital indebtedness are allowable costs, if such interest is both "necessary" and "proper". 42 C.F.R. § 405.419(a). The question of whether the interest relevant to this case is "proper", 42 C.F.R. § 405.419(b)(3), is not before the Court, there being no dispute as to that point. The relevant language is found in 42 C.F.R. § 405.419(b)(2):

- (2) <u>Necessary</u>. Necessary requires that the interest:
- (i) Be incurred on a loan made to satisfy a financial need of the provider. Loans which result in excess funds or investments would not be considered necessary.
- (ii) Be incurred on a loan made for a purpose reasonably related to patient care.

The basis for the Administrator's decision is that the loan by Plaintiff to the Research Center and the subsequent stock transaction resulted in an investment in an office building; this, the Administrator concluded, rendered the interest expense claimed both "not necessary" and "not incurred on a loan made for a purpose reasonably related to patient care" under 42 C.F.R. 405.419(b)(2)(i) and (ii).

The legal question is whether the Administrator could interpret the regulation as he did in denying Plaintiff's claim. The general rule, of course, is that the court will defer to an agency's construction and interpretation of its own regulations, see, e.g., Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792 (1965); Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 65 S.Ct. 1215 (1945); Pacific Coast Medical Enterprises v. Harris, supra; Montana Power Co. v. Environmental Protection Agency, 608 F.2d 334 (Ninth Cir. 1979). However, as the court in Pacific Coast Medical Enterprises noted:

The deference which a reviewing court is to afford to an agency's interpretation of its regulations is not total, however. Congress has vested in the court a reviewing function over the action of the agency, including its interpretative decisions. 42 U.S.C. § 139500(f), 5 U.S.C. §§ 701-706. We would be abdicating our judicial responsibility if we were to pass on the propriety of the Secretary's interpretation without subjecting it to some degree of scrutiny. As where courts review an agency's construction of a statute which the agency administers, "the deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia ...." erican Ship Building Co. v. NLRB, 380
U.S. 300, 318, 85 S.Ct. 955, 967, 13
L.Ed.2d 855 (1965); Volkswagenwerk
Aktiengesellschaft v. Federal Maritime
Commission, 390 U.S. 261, 88 S.Ct. 929,
19 L.Ed.2d 1090 (1968). Even though the Medicare reimbursement area is complex, and to a great degree left to the Secretary to structure, his interpretations are nonetheless subject to our examination.

633 F.2d at 131 (footnotes omitted).

The Plaintiff argues that this decision totally overlooks the agreement between Plaintiff and the Warren Foundation and the subsequent receipt of restricted donations from the Foundation, which had the net effect of having all bond proceeds apply to Phase II construction, notwithstanding the fact that they were temporarily "invested" in the Professional Building. The decision, Plaintiff contends, emphasizes the form of the transactions while ignoring its true substance.

In speaking to this argument, the Administrator stated:

The Provider's argument that the substance of the transaction should determine the Medicare reimbursement consequences has There was testimony at the been noted. hearing before the Board that if this transaction had been structured in such a way that the Warren Foundation had transferred funds to the Warren Research Center for repayment of the notes to the Provider, there would have been no disallowance of the cost. had happened, the Provider would not have acquired the stock and with it, the Professional Building, as part of the trans-In that way, the loan by the Provider to the Warren Research Center would have retained its character as a loan, rather than having been transformed into an investment for the Provider. However, reimbursement under Medicare must be in accordance with the actual transactions, not hypothetical situations which might have warranted reimbursement.

#### Record at 13.

The Court finds that it agrees with the Administrator's statement that "reimbursement under Medicare must be in accordance with the actual transaction..." There are, however, different ways of overlooking the actual transaction: one is to argue hypotheticals; another is to cut short one's analysis of the transaction.

In <u>Pacific Coast Medical Enterprises v. Harris</u>, <u>supra</u>, the plaintiff provider by an agreement, acquired 100% of the stock of the Community Hospital of Los Angeles. Nine months later, it liquidated the hospital as a corporation, and the hospital's assets were distributed to the plaintiff. The intent of Pacific Coast was at all times to acquire the assets of Community Hospital, the stock acquisition being no more than a preliminary step. In

question was the plaintiff's ability to use the stock price it paid for the Community Hospital stock as its cost basis for Medicare claims. The Secretary viewed the transaction as two independent events, and concluded that no reevaluation of assets could take place after either event, thereby denying plaintiff a step-up basis. This, of course, affected plaintiff's Medicare reimbursements.

In discussing the Secretary's characterization of the transaction, the Court said:

Resolving whether the PCME transaction should be viewed as a single acquisition or multiple transactions nearly determines our consideration of the Secretary's decision. Thus, we must examine the threshold question of this characterization before moving to a detailed review of the regulations involved.

The Secretary has implicitly determined that PCME's action must be viewed as two independent events, each to receive a separate evaluation under the Medicare regulations. His opinion asserts that "[a]ctually, two separate transactions occurred," yet it offers forth no reasoning or supporting authority to substantiate this view. Nor did the Secretary in his arguments to this Court present any reason why the transaction should be viewed as two separate events.

Even conceding our desire to accord deference to the Secretary's judgment, we believe that his view ignores the substance of the transaction. When an agency proposes to define a transaction in a way which deviates from the common understanding, and which is not a definition foreseeably left to the Secretary's discretion to establish, we must require at least some basis before we can say that such a decision is not arbitrary and irrational.

633 F.2d at 132. In the instant case, the Administrator has offered no reason why the analysis employed should come to a halt when the Plaintiff acquired the stock of the Professional Building, without considering the related transactions involving the Plaintiff and the Foundation. The Administrator's decision fails to address or support his treatment of the transaction for Medicare purposes as having ended with the acquisition of the Professional Building stock. The Administrator, in his decision, Record at 14, states

that it is his position that "the character of the loan in this case could not be determined until the funds were actually used by the Provider, regardless of what the intent may have been when the loan was made." Laying aside, for the moment, the contention of Plaintiff that financial need should have been evaluated at the time of the making of the loan, it is apparent that the Administrator has failed to carry his analysis of the actual use of the funds to its conclusion.

Finding no basis in the Administrator's decision for his treatment of the transaction, the Court can only conclude that his decision is arbitrary and irrational, and cannot stand. Court, however, is of the opinion that this matter should be remanded to the Administrator so that the decision can be clarified, either by considering the related transaction between the hospital and the Foundation, or stating why that matter is to be disregarded. remand for a fuller statement of an agency's reasoning, where the bases of the decision are not clear or where the Court is left in doubt as to an essential element of the decision, is an appropriate remedy. See, e.g., Camp v. Pitts, 411 U.S. 138, 93 S.Ct. 1241 (1973); Compania De Gas De Nuevo Laredo, S.A., v. Federal Energy Regulatory Comm'n, 606 F.2d 1024 (D.C.Cir. 1979); City Federal Savings & Loan Ass'n v. Federal Home Loan Bank Bd., 600 F.2d 681 (Seventh Cir. 1979); Abbott Laboratories v. Harris, 481 F.Supp. 74 (N.D.III. 1979); Nederostek v. Adams, 449 F.Supp. 286 (D.D.C. 1978).

Accordingly, the Court finds that Plaintiff's motion to reverse the Secretary's decision should be granted in part, Defendant's motion to affirm the Secretary's decision should be denied, and this matter should be remanded to the Secretary for further consideration in accordance with this opinion.

IT IS THEREFORE ORDERED that Defendant's motion to affirm the Secretary's decision be hereby denied, and that Plaintiff's motion to reverse the Secretary's decision be, and the same hereby is, granted in part, and this matter is hereby ordered remanded to the Secretary for further consideration in conformity with

this opinion and order.

It is so Ordered this 14 day of September, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

JENENE NICKERSON BIANCHINI,	)	
Plaintiff,	)	
vs.	) No. 79-0	-562-E
NORTHERN NATURAL GAS COMPANY, a corporation,	) ) )	FILED
Defendant.	ý	SEP 1 4 1981
	JUDGMENT	Jack . Sover, Jern U. S. DISTRICT COURT

The Court, having this date filed its Findings of Fact and Conclusions of Law after non-jury trial of this case, holds that judgment should be entered in favor of the Defendant, Northern Natural Gas Company.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment in this case be granted in favor of Defendant and against Plaintiff, Defendant to recover its costs incurred herein.

It is so Ordered this 1474 day of September, 1981.

ARPIK CHAMRAS, Conservator of VARTOOTHE KOOLMARY,

Plaintiff,

vs.

No. 79-C-733-E

AMERICAN AIRLINES, INC.,
a foreign corporation; and
PAN AMERICAN WORLD AIRWAYS,
INC., a foreign corporation,

SEP 1 4 1981

ORDER

Jack . Silver, Clerk U. S. DISTRICT COURT

This is an action to recover for personal injuries allegedly sustained by Vartoothe Koolmary as a result of an accident which occurred in a New York airport, where Plaintiff was injured when she was struck by a baggage cart. Plaintiff alleges that the Defendants breached their duty to exercise the high degree of care required of carriers for the protection of their passengers.

Before the Court for consideration at this time is the Motion to Dismiss of Defendant Pan American World Airways, Inc. (Pan Am), made pursuant to rule 12(b), Fed.R.Civ.Pro., on the grounds that this Court lacks personal jurisdiction over Defendant Pan Am, and that the Amended Complaint fails to state a claim upon which relief can be granted.

At the outset, the Court notes that jurisdiction over Pan Am must exist, if at all, under either Okla.Stat. tit. 12, § 187 or Okla.Stat. tit. 12, § 1701.03, since Okla.Stat. tit. 18, § 1.204a was repealed effective April 10, 1980, 1980 Okla. Sess. Laws, c. 68, § 1.

A Federal District Court, of course, must look to the law of the state in which it sits to determine whether it has in <a href="mailto:personam">personam</a> jurisdiction over a defendant. <a href="mailto:See">See</a>, <a href="mailto:e.g.">e.g.</a>, <a href="mailto:Doyn Aircraft">Doyn Aircraft</a></a>
<a href="mailto:v. Wylie">v. Wylie</a>, <a href="mailto:443">443</a> F. <a href="mailto:579">F. <a href="mailto:2d 579">2d 579</a> (Tenth Cir. 1971); <a href="mailto:Londa Mfg">Londa Mfg</a>. <a href="mailto:Co.v. Saturn Rings">Co.v. Saturn Rings</a>, <a href="mailto:Inc.">Inc.</a>, <a href="mailto:503">503</a> F. <a href="mailto:Supp. 52">F. <a href="mailto:Supp. 52">W.D. Okla. 1980</a>).

In order for a nonresident defendant to be amenable to suit in an Oklahoma court under either section 1701.03 or section 187, "the acts alleged to give rise to the cause of action must be the

same acts which provide the basis for the Oklahoma court's exercise of jurisdiction over the nonresident defendant." Acme Equipment

Co. v. Metro Auto Auction, 484 F.Supp. 219, 221 (W.D. Okla. 1979).

In <u>Luckett v. Bethlehem Steel Corp.</u>, 618 F.2d 1373 (Tenth Cir. 1980), the Court said:

We reiterate our statement in George v. Strick Corporation, [496 F.2d 10 (Tenth Cir. 1973)] that these statutes "authorizes in personam jurisdiction to the outer limits of due process when and only when the asserted cause of action arises from the defendant's activities within the state." 496 F.2d at 13.

618 F.2d at 1386 (Emphasis the Court's). In Roberts v. Jack Richards Aircraft Co., 536 P.2d 353 (Okla. 1975), the Court said:

If ... jurisdiction is bottomed on 'doing business within the State,' then [12 O.S. 1971 §§ 1701.03 and 187] require the cause of action to accrue from such acts.

536 P.2d at 355. See also Hoster v. Monongahela Steel Corp., 492 F.Supp. 1249 (W.D. Okla. 1980).

Plaintiff argues that Pan Am maintains telephone directory listings within the State of Oklahoma, is authorized to do business within the state, maintains a registered service agent within the state, and has had "at least two employees who have performed part of their duties ... within the state." Plaintiff apparently misapprehends the thrust of Defendant's argument. The analysis of such problems requires the examination of two separate questions (1) does a statute exist by which the exercise of such jurisdiction is authorized and (2) is the exercise of such jurisdiction consistent with the standards of constitutional due process, see J.E.M. Corp. v. McClellan, 462 F.Supp. 1246 (D. Kan. 1978); Timberlake v. Summers, 413 F.Supp. 708 (W.D. Okla. 1976). In the Timberlake case, the Court said:

If the answer to the first part of the question is no, the second part should not be reached. To ask if the court may exercise jurisdiction though not authorized by statute, and to answer affirmatively, is to write a law for the state that the legislature itself did not see fit to write.

413 F.Supp. at 711. Plaintiff's arguments concerning contacts go to the second question, not the first. The sufficiency of a Defendant's contacts only becomes relevant when a statute authorizes jurisdiction.

The burden in such cases is upon the party asserting the existence of jurisdiction, Wilshire Oil Co. v. Riffe, 409 F.2d 1277 (Tenth Cir. 1969); Londa Mfg. Co. v. Saturn Rings, Inc., supra. In the instant case, Plaintiff pleads no cause of action arising from any activities of Pan Am occurring with this state; any acts or omissions of Pan Am out of which this action arose obviously must have taken place in New York. It could, of course, be argued that Plaintiff would not have been in New York at the time of the alleged injury but for the purchase of a ticket in Oklahoma for passage on a Pan Am flight; such a connection, however, is too tenuous to sustain jurisdiction, even if Plaintiff's arguments concerning all of the contacts between Pan Am and Oklahoma are considered. As the Court in Luckett v. Bethlehem Steel Corp., supra, stated:

We cannot accept plaintiffs' contention that, while the cause of action did not arise from defendant's acts in Oklahoma in the legal sense, there is sufficient connection between the two to fulfill due process requirements and sustain jurisdiction. Such an assertion confuses the constitutional requirements with the more stringent requirements of the Oklahoma statutes.

618 F.2d at 1386.

The Court is, accordingly, of the opinion that there is no basis to assert in personam jurisdiction over Pan Am, and its motion to dismiss should be granted.

IT IS THEREFORE ORDERED that the Motion to Dismiss of Defendant Pan American World Airways, Inc. be, and the same hereby is, granted.

It is so Ordered this /4 day of September, 1981.

IN THE UNITED STATES DISTRICT COURT 1 1 1911

CLOLA W. SASSER,

Plaintiff,

vs.

No. 80-C-314-E

PATRICIA ROBERTS HARRIS,
Secretary of Health and Human
Services,

Defendant.

#### JUDGMENT

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the Defendant, Secretary of Health and Human Services (Secretary) and after due proceedings had, and upon examination of the pleadings and record filed herein, including the briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed herein of this date that the final decision of the Secretary is supported by substantial evidence as required by the Social Security Act, and should be affirmed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the final decision of the Secretary should be and the same hereby is affirmed.

It is so Ordered this 147 day of September, 1981.

	ORDER	Jack I. Silver, Clerk U. S. DISTRICT COURT
Respondents.	ý	SEP 1 4 1981
"14th DIST. COURT & STATE" and ATTORNEY GENERAL OF OKLAHOMA,	) ) )	FILED
vs.	) ) No.	80-C-685-E
Petitioners,	)	
ROBERT E. COTNER and PEOPLE,	)	

The Court has before it for consideration Petitioner's petition for writ of habeas corpus and Respondent's Motion to Dismiss. The Court has received information that Petitioner is no longer in custody (Exhibit A, attached to this Order). Under the circumstances, the Court finds that Petitioner's application for a writ of habeas corpus is moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Robert Cotner's petition for writ of habeas corpus should be and the same is hereby dismissed.

It is so Ordered this 14th day of September, 1981.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MELODY DIANE PHILLIPS, Administratrix of the Estate of Myrle Lynn Miles,

Plaintiff,

Vs.

No. 81-C-32-E ∨

BLACKWELL TRUCK AND ROUSTABOUT SERVICE, INC.; BARRY EUGENE STAFFORD; OIL FIELD RENTALS; MARION JOYCE McCLAREN; L. B. JACKSON DRILLING COMPANY; ANADARKO PRODUCTION COMPANY; TULSA DRILLING CO.; and SHEBESTERBECHTEL, INC.,

Defendants.

SEP141981 dw

Jack . Sliver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has before it for consideration the motion for summary judgment filed by Defendant L. B. Jackson Drilling Company, pursuant to Fed.R.Civ.P. 56. Plaintiff, in her response to the motion, has indicated that she agrees that Defendant L. B. Jackson Drilling Company is entitled to summary judgment in this case.

Both parties being in agreement, it is therefore ordered, adjudged and decreed that the Motion for Summary Judgment filed by Defendant L. B. Jackson Drilling Company should be and the same is hereby sustained.

It is so Ordered this 14 day of September, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Plaintiff,

vs.

OFFICERS LEEDY, GARDNER, MATNEY, and et al.,

Defendants.

ORDER

Plaintiff,

No. 80-C-500-E

SEP141981

The Court has before it for consideration the Motions for Summary Judgment filed by Defendants Leedy and Matney. This is a pro se civil rights action, one of many filed by Plaintiff. In this particular action, Plaintiff alleges that his civil rights have been violated by Defendants, in that Defendants conspired to murder Plaintiff and to steal his property.

U.S. DISTRICT COURT

At the outset, the Court takes note of well settled law regarding summary judgments. The Federal Rules of Civil Procedure provide that summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). While it is the duty of the Court to grant a motion for summary judgment in an appropriate case, the relief contemplated by Fed.R.Civ.P. 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes. Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (Tenth Cir. 1975); Jones v. Nelson, 484 F.2d 1165, 1168 (Tenth Cir. 1973); Machinery Center, Inc. v. Anchor National Life Insurance Co., 434 F.2d 1, 6 (Tenth Cir. 1970).

Pleadings must therefore be liberally construed in favor of the party opposing summary judgment. Harsha v. United States, 590 F.2d 884, 887 (Tenth Cir. 1979); Harmon v. Diversified Medical Investments Corp., 488 F.2d 111, 113 (Tenth Cir. 1973), cert. denied, 425 U.S. 951 (1976). Summary judgment must be denied unless the moving party demonstrates entitlement to it beyond a reasonable doubt. Norton v. Liddel, 620 F.2d 1375, 1381 (Tenth Cir. 1980); Madison v. Deseret Livestock Co., 574 F.2d 1027, 1037 (Tenth Cir. 1978). If there is

any indication of a genuine issue as to any material fact, summary judgment should not be granted. Exnicious v. United States, 563 F.2d 418, 424 (Tenth Cir. 1977); Phillips Machinery Co. v. LeBlond, Inc., 494 F.Supp. 318, 324-325 (N.D. Okla. 1980).

The facts before the Court establish that, on September 13, 1979, the Defendants, who are both deputy sheriffs of Tulsa County, Oklahoma, were directed by their superiors to assist officers of the Tulsa Police Department in serving Plaintiff with an outstanding felony arrest warrant for the felony crime of unlawful delivery of marijuana. Defendants were also issued a lawfully executed warrant to search a Tulsa County residence in which Plaintiff was believed to be staying (it was Plaintiff's mother's home). The Defendants have filed numerous affidavits and exhibits which describe their course of action on September 13, 1979, the evidence that was obtained that date during the search and also the disposition of said evidence by the Police Department.

Defendants' basic argument in support of their summary judgment motions is that the record reflects Defendants were only doing their job, as required by law, in a proper manner and that they consequently are entitled to good faith immunity in this lawsuit. See Pierson v. Ray, 386 U.S. 547 (1967); Scheuer v. Rhodes, 416 U.S. 232 (1974).

Plaintiff has filed his response to the Defendants' Motions for Summary Judgment. Giving Plaintiff's response a liberal construction, Haines v. Kerner, 404 U.S. 519, 520 (1972), as this Court must, the Court is convinced that under the circumstances of this case summary judgment should and must be rendered in favor of Defendants Leedy and Matney. Plaintiff's response fails to refute the notion that good faith immunity is proper in this case. In fact, Plaintiff's response borders on the absurd, filled as it is with bizarre and salacious charges leveled against members of the local law enforcement community and the local judiciary.

After a careful review of the record in this case and the applicable law, the Court finds that Defendants are entitled to good faith immunity for the actions they performed. Since Plaintiff has not been deprived of any constitutionally protected rights, it follows

that these Defendants cannot be held liable for conspiracy to deprive Plaintiff of his rights. See Holmes v. Finney, 631 F.2d 150, 152 (Tenth Cir. 1980).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motions for Summary Judgment filed by Defendants Leedy and Matney should be and the same are hereby sustained.

It is so Ordered this 14th day of September, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

**02 4**//0 006

IN THE UNITED	STATES DISTRIC	CT COURT FOR	THE
NORTHER	RN DISTRICT OF		
			SEP 1 4 1981
H. J. MAXEY,  Plaintif	) ) (f, )		Jack Silver, Sierk J. S. DISTRICT COURT
-vs-	, )	NO. 81-C-3	45-B
BOARD OF GOVERNORS OF TREGISTERED DENTISTS OF OKLAHOMA, L.E. LONG, and JAMES E. POE,	)		
Defendan	ts. )		

#### NOTICE OF DISMISSAL WITHOUT PREJUDICE

TO: THE BOARD OF GOVERNORS OF THE REGISTERED DENTISTS OF OKLAHOMA, L.E. LONG, and JAMES E. POE

Notice is horeby given that H. J. MAXEY elects to dismiss without prejudice the above-entitled action, such dismissal being made pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure before service by the adverse parties of either Answerw or Motions for Summary Judgment.

DATED September \_\_\_\_\_\_, 1981.

ALLIS & VANDIVORT, INC.

Thomas S. Vandivort

By

Thomas S. Vandivort

Attorney for Plaintiff

#### dertificate of Mailing

I, THOMAS S. VANDIVORT, hereby certify that on this \( \frac{1}{2} \) day of September, 1981, I placed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Dismissal Without Prejudice addressed to all Defendants named herein.

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Thomas		7.7	andiront
Homas	D.	v	andivort

ALLIS

ANDIVORT. INC.

WELLINGTON SQ.

1150 E 4151 ST

ULSA, OK 74105

#### UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff. CIVIL ACTION NO. 81-C-347-C vs. RUSSELL J. McNALLY, Defendant. SEP 14 1981

#### DEFAULT JUDGMENT

U.S. DISTRICT COUR This matter comes on for consideration this day

Jack C. Silver, Clerk

of September, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Russell J. McNally, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Russell J. McNally, was personally served with Summons and Complaint on July 18, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Russell J. McNally, for the principal sum of \$1,154.51 (less the sum of \$550.00 which has been paid), plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES OF AMERICA

FRANK KEATING

tates Att

Assistant U. S. Attorney

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 81-C-331-C

DOUGLAS L. THURMAN,

Defendant.

FILED

SEP 1 2 1981 1

#### DEFAULT JUDGMENT

Jack C. Silver, Clerk S. DISTRICT COURT

This matter comes on for consideration this \_\_\_\_\_\_day of September, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Douglas L. Thurman, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Douglas L. Thurman, was personally served with Summons and Complaint on July 31, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Douglas L. Thurman, for the principal sum of \$618.93.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PAULA S. OGG

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEP 1 4 1981

GEODATA CORPORATION, an Oklahoma corporation, ) Jack . Suver, Jern U. S. DISTRICT COURT

vs. ) No. 81-C-81-E

QUANTEX RESOURCES, INC., a
Texas corporation, and H. GLYEN
LEMMON, an individual,

Defendants.

#### ORDER

The Court has before it for consideration Defendants' Motion to Dismiss and, in the Alternative, Defendants' Motion to Transfer.

Both parties have fully briefed the issues raised by Defendants' motions.

The Court will first deal with the Motion to Dismiss.

Defendants' Motion to Dismiss, filed pursuant to Fed.R.Civ.P. 12(b)(2), is based upon the premise that this Court lacks personal jurisdiction over the person of Defendants since Defendants do not have the requisite "minimum contacts" to meet the constitutional standards which due process requires.

This is an action brought by Plaintiff for breach of a contract in which Defendants agreed to purchase a certain geological report from Plaintiff. The affidavits submitted by the parties establish the following facts. Plaintiff is an Oklahoma corporation having its principle place of business in Tulsa, Oklahoma. Defendant Quantex Resources, Inc. is a Texas corporation with its principle place of business in Dallas, Texas. Defendant H. Glyen Lemmon, President of Quantex Resources, Inc., is a citizen and resident of Dallas, In October of 1980, Defendant Lemmon, acting as President of Defendant Quantex, made at least one telephone call to Plaintiff's office in Tulsa, Oklahoma requesting information on Plaintiff's geological reports. Plaintiff mailed sales literature to Defendant's office in Texas as requested. Subsequently, Defendant Lemmon caused to be ordered a report for Defendant Quantex known as the Chenoweth Report. This order was established over the telephone and also by submitting a form to Plaintiff's office in Tulsa, Oklahoma.

In January of 1981, Plaintiff delivered the report to Defendants in Dallas, Texas. At that time, Plaintiff required Defendant Lemmon on behalf of Defendant Quantex to execute a written sales agreement. Defendant Lemmon paid Plaintiff by check at that time for the report. Later that month, Defendants stopped payment on the check at which time Plaintiff instituted this lawsuit in Tulsa County District Court in Tulsa, Oklahoma. Defendants removed the action to this federal court pursuant to 28 U.S.C. § 1441(a).

Defendants allege that the Oklahoma courts may not properly exercise in personam jurisdiction over Defendants because they have not performed any of the requisite acts to be brought into Oklahoma's courts pursuant to Oklahoma's long arm statutes. In a diversity case such as this, the Court will, of course, look to the applicable state law to determine the basis, if any, for exercise of personal jurisdiction over a non-resident defendant. Henderson v. University Associates, Inc., 454 F.Supp. 493, 494 (W.D. Okla. 1977); Standard Life and Accident Insurance Co. v. Western Finance, Inc., 436 F. Supp. 843, 845 (W.D. Okla. The test for exercising long arm jurisdiction in Oklahoma involves the analysis of two distinct questions: (1) is the exercise of jurisdiction authorized by statute, and, if so, (2) is the exercise of jurisdiction consistent with the constitutional requirements of due process. Luckett v. Bethlehem Steel Corp., 618 F.2d 1373, 1385 (Tenth Cir. 1980); Timberlake v. Summers, 413 F. Supp. 708, 710 (W.D. Okla. 1976).

Plaintiff seeks to invoke Okla.Stat.Ann.Tit. 12, § 187(a)(1) and Okla.Stat.Ann.Tit. 12, §§ 1701.03(a)(1) & (a)(7) as authority for exercising personal jurisdiction over the Defendants Quantex and Lemmon. Section 187 provides that:

A. Any person, firm or corporation other than a foreign insurer licensed to do business in the State of Oklahoma whether or not such party is a citizen or resident of this State and who does, or who has done, any of the acts hereinafter enumerated, whether in person or through another submits himself, or shall have submitted himself, and if an individual his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising, or which shall have arisen, from the doings of any of said acts: (1) the

transaction of any business within this state.

## Section 1701.03 provides that:

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's (1) transacting any business in this state; ... (7) maintaining any other relation to this state or to persons or property including support for minor children who are residents of this state which affords a basis for the exercise of personal jurisdiction by this state consistently with the constitution of the United States.

The statutes quoted, <u>supra</u>, indicate that the transaction of any business within the State of Oklahoma will give rise to the authorization for the exercise of in personam jurisdiction. It is settled in Oklahoma that even a single contact may suffice to authorize the exercise of in personam jurisdiction. <u>B. K. Sweeny</u>

Co. v. Colorado Interstate Gas Co., 429 P.2d 759, 762 (Okla. 1967).

The facts before this Court do not establish that Defendants were "transacting business" within this state. At most, Defendants sought to purchase a product from an Oklahoma business. Accordingly, the only statutory basis upon which this Court could exercise jurisdiction is § 1701.03(a)(7). Thus, the issue is whether Defendants have maintained a relationship to this state which satisfies the "minimum contacts" required by the due process clause of the United States Constitution.

The test to be applied is well known. The Defendant must have minimum contacts with the forum such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). It is clear that the Oklahoma long arm statutes are intended to extend the jurisdiction of Oklahoma courts over non-residents to the outer limits permitted by the due process requirements of the United States Constitution. Burchett v. Bardahl Oil Co., 470 F.2d 793, 797 (Tenth Cir. 1972); Jem Engineering and Manufacturing, Inc. v. Toomer Electrical Co., 413 F.Supp. 481, 484 (N.D. Okla. 1976). In weighing the facts of the case to determine whether the requirements of due

process are met, the Court must consider the totality of contacts between the non-resident Defendants and the State of Oklahoma. <u>Federal National Bank & Trust Co. of Shawnee v. Moon</u>, 412 F.Supp. 644, 646 (W.D. Okla. 1976); <u>Crescent Corp. v. Martin</u>, 443 P.2d 111, 115 (Okla. 1968).

Under decisions of the Oklahoma courts, a non-resident who is a mere "passive" purchaser does not have sufficient contacts to in-voke the in personam jurisdiction of the Oklahoma courts. As was stated in <u>Jem Engineering and Manufacturing</u>, Inc. v. Toomer Electrical <u>Co.</u>, <u>supra</u>,:

There is no question but that in personam jurisdiction will be upheld in Oklahoma where the non-resident defendant is a seller who has shipped goods into Oklahoma, even if such shipment was an isolated or infrequent occurence ... however the Oklahoma courts are more reticent to uphold in personam jurisdiction where the defendant is a non-resident buyer. ... As stated in Vacu-maid [Vacumaid, Inc. v. Covington, 530 P.2d 137 (Okl. Ct.App. 1974)], "the reason most often given for this buyer-seller distinction is that the seller is the aggressor or initiator in the forum and by selling his product in the state he receives the benefit and protection of the forum state's laws, and hopefully profits from its business therein. Further, allowing jurisdiction over "passive" buyers would tend to extinguish state lines and also to discourage outof-state purchasers from dealing with resident sellers.

Jem Engineering and Manufacturing, Inc. v. Toomer Electrical Co., 413 F.Supp. 481, 484 (N.D. Okla. 1976).

The Court is aware that the status of the parties as buyer or seller is not determinative of the issue of in personam jurisdiction.

See Yankee Metals Product Co. v. District Court, 528 P.2d 311 (Okl. 1974). It is, however, an important factor to be weighed by the Court. Under the circumstances of this case, this Court is convinced that Defendants have not availed themselves of the benefits of the forum, that the requisite "affiliating circumstances" are simply not present which would allow this Court to exercise in personam jurisdiction over Defendants. See Hanson v. Denckla, 351

U.S. 235, 246 (1958).

Having decided in favor of Defendants on their Motion to Dismiss, the Court need not consider Defendants' alternative motion to transfer.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss should be and the same is hereby sustained.

IT IS FURTHER ORDERED that Defendants' Motion to Transfer is moot.

It is so Ordered this 14th day of extender, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Jack . Sliver, Clerk

IN THE UNITED STATES DISTRICT COURT S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. DUNCAN I	McNEILL and LAWRENCE	: I. ) )		
	Plaintiffs,	)		
vs.		)	No.	81-C-195-E
GEOSOURCE,	INC.,	)		
	Defendant.	)		

#### ORDER

The Court has before it for consideration Defendant's Motion to Dismiss, made pursuant to Rule 12(b)(1) and (6), Fed.R.Civ.Pro. Defendant's motion was filed on June 1, 1981, and Plaintiffs' First Amended Complaint was filed on July 31, 1981. On August 19, 1981, however, Defendant filed its Reply Brief and Supplemental Motion to Dismiss, directing its arguments to the Amended Complaint.

In summary, Plaintiffs herein seek declaratory and injunctive relief under their First Claim for Relief, and monetary damages in their Second Claim for Relief. Plaintiffs would have this Court render a declaratory judgment that the settlement agreement and consent decree filed in Case Number 75-C-239 (N.D. Okla.), Wheatley Co. v. Crown Valves, Inc., et al., do not prevent Plaintiffs or Crown Energy Products, Inc., from manufacturing and selling a certain type of valve (the "polynose valve"). Plaintiffs further would seek a permanent injunction enjoining Defendant from interfering in any way, including the commencement of patent infringement or unfair competition litigation, with Plaintiffs' manufacture and sale of the polynose valve.

The Defendant argues that there exists no actual controversy in this matter, as required by 28 U.S.C. § 2201, in that the patent which covered the polynose valve, Patent No. 2,918,924, expired on December 29, 1976, and that Plaintiffs' requested relief insofar as it pertains to future lawsuits based upon unfair competition would be an overreaching injunction, relitigating, in essence, Case No. 75-C-239.

A review of the file in Case No. 75-C-239 discloses that the

basis of the action in that case was not simply the infringement of certain patents, but that Plaintiff therein also claimed numerous acts of unfair competition, including the wrongful appropriation, utilization and copying of Plaintiff's documents, drawings, catalogs, papers and records. An examination of the Consent Decree filed on March 5, 1976, reveals that only one paragraph thereof deals with the ownership and validity of patents, while the balance deals with the Defendants' use of certain technical data and catalogs.

Returning to the instant action, it is undisputed that Patent No. 2,918,924 expired on December 29, 1976. The Declaratory Judgment Act, 28 U.S.C. § 2201, empowers the Court to declare the rights of the parties "in a case of actual controversy within its jurisdiction." The existence of an actual controversy is jurisdictional, since the Federal judicial power extends only to "cases" or "controversies." U. S. Const., Art. III, § 2. In determining whether an "actual controversy" exists,

The touchstone is a reasonable apprehension. There must be, in other words, some concrete indication that the defendant patentee claims the plaintiff's activity infringes his patent, and also that he will act affirmatively to enforce the protection which he claims.

Japan Gas Lighter Ass'n v. Ronson Corp., 257 F.Supp. 219, 237 (D. N.J. 1966). It is obvious in this case that Plaintiffs can be under no apprehension concerning the patent in question; it has expired, and it cannot be infringed. Any order prohibiting acts of "infringement" would therefore be a nullity, simply due to the passage of time, see Hughes Tool Co. v. A. F. Spengler Co., 73 F.Supp. 156 (W.D. Okla. 1947); see also Devex Corp. v. General Motors Corp., 467 F.2d 257 (Third Cir. 1972), cert. denied, 411 U.S. 973, 93 S.Ct. 2145 (1973); International Shoe Machine Corp. v. United Shoe Machine Corp., 242 F.Supp. 765 (D. Mass. 1965); McLemore v. Southern Implement Manufacturing Co., 227 F.Supp. 272 (N.D. Miss. 1964), aff'd, 350 F.2d 244 (Fifth Cir. 1965).

Insofar as Plaintiffs would seek an injunction enjoining Defen-

dant from the commencement of unfair competition litigation, there is nothing of record presently before the Court that would justify such a "preemptive strike." It is impossible to foresee the manner and method by which Plaintiffs will manufacture and market the valve in question; it is impossible to guess at what Defendant's response will be. To enjoin a party from bringing any legal action in such a factual vacuum would be most inappropriate. As Chief Justice Hughes in Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461 (1937) said:

A "controversy" in this sense must be one that is appropriate for judicial determination. ... A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. ... The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. ... It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

300 U.S. at 240-241, 57 S.Ct. at 464 (citations omitted). This is not to say, however, that there may never be a time when the relief sought by Plaintiffs would be appropriate; the Court simply states that upon the facts as are presently existing, the Court believes that it is proper to decline to exercise its jurisdiction under 28 U.S.C. § 2201, see, e.g., Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 62 S.Ct. 1173 (1942); Shannon v. Sequeechi, 365 F.2d 827 (Tenth Cir. 1966), cert. denied, 386 U.S. 481, 87 S.Ct. 1175 (1967).

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss be, and the same hereby is, sustained and granted, and that this action be dismissed without prejudice.

It is so Ordered this 14 day of September, 1981.

JAMES O. ELLISON UNITED STATES DISTRICT JUDGE IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA 1 . 1981

WILLIAM R. WEST,

Plaintiff,

Vs.

No. 81-C-237-E

AMERICAN BANKERS LIFE
ASSURANCE COMPANY OF FLORIDA,
a Florida corporation,

Defendant.

#### ORDER

Presently pending before the Court for consideration are Plaintiff's Motion to Remand and Defendant's Motion to Dismiss, directed to Plaintiff's Second Cause of Action.

This action was commenced on the 24th day of April, 1981, in the District Court of Tulsa County, Oklahoma, and was removed to this Court by Defendant on May 26, 1981, pursuant to 28 U.S.C. §§ 1332 and 1441.

The Plaintiff alleges he and Defendant entered into a written agreement concerning the payment to Plaintiff of certain commissions on the sales of insurance policies for a specified time. Plaintiff alleges that Defendant has collected monies payable to Plaintiff as commissions, but that it has failed to pay Plaintiff the sums due. Plaintiff's Second Cause of Action alleges that Defendant has wrongfully retained the monies in question and has converted them to its own use. Plaintiff alleges that Defendant's actions in refusing to pay were willful and malicious, and for such actions, Plaintiff seeks punitive damages in the sum of \$5,000,000.00, plus all monies found to be due and owing to Plaintiff.

Plaintiff argues in support of his motion to remand that he has a "primary right" to choose his forum, that this case is not subject to the "exclusive jurisdiction" of the Federal Courts, that there is no certainty that Plaintiff's damages will exceed \$10,000.00, and that at the time of the commencement of the action diversity did not exist.

Defendant answers these arguments by contending that diversity of citizenship does indeed exist, that the amount in controversy

is in excess of \$10,000.00, and that Defendant has every right to remove this case under 28 U.S.C. § 1441.

It appears that Plaintiff is a citizen of Oklahoma, and that Defendant is a Florida corporation, with its principal place of business in the State of Florida. Complete diversity, therefore exists, 28 U.S.C. § 1441(a), § 1332(a) and (c). As to the amount in controversy, Plaintiff seeks an accounting, the payment of all monies found to be due to Plaintiff, and, in his Second Cause of Action, \$5,000,000.00 in punitive damages. This matter is also involved in Defendant's Motion to Dismiss.

The gist of Plaintiff's claim herein is the breach, by

Defendant, of written contracts allegedly entered into on

December 1, 1976, and July 1, 1978. Plaintiff alleges no damages

other than those arising from this alleged breach. Under the al
legations of the Petition, Plaintiff would not be entitled to re
cover punitive damages as a matter of law.

Title 23 Oklahoma Statutes, section 9, provides:

In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

The Plaintiff herein is asking for specific performance of a contract. The Plaintiff does not request any compensatory or actual damages. He is simply asking for an accounting and the payment of commissions due to him for the sale and renewal of certain insurance policies. It is not impermissible to join a tort claim with a claim for specific performance, see Fletcher v. Western Nat'l Life Ins. Co., 10 Cal. App.3d 376, 89 Cal. Rptr. 78 (1970). However, the Court cannot engraft a tort claim onto Plaintiff's Petition. A simple allegation that the Defendant's actions were willful, malicious, and in bad faith and that the Plaintiff is therefore entitled to punitive damages does not change the nature of Plaintiff's lawsuit, because the Plaintiff has not alleged that he has suffered any actual damage independent of the Defendant's

alleged failure to pay the sums due. Absent actual damage, a Plaintiff is not entitled to recover punitive damages, see Okla.Stat.Tit. 23, § 9, supra. It is, of course, well-settled in Oklahoma that a breach of contract will not support a claim for punitive damages, and that actual damages arising from the breach of an obligation other than a contractual one must be alleged and proven before exemplary damages may be recovered, see, e.g., Garland Coal & Mining Co. v. Few, 267 F.2d 785, 791 n. 7 (Tenth Cir. 1959); Phillips Machinery Co. v. LeBlond, Inc., 494 F.Supp. 318 (N.D. Okla. 1980); Wheeler Stuckey, Inc. v. Southwestern Bell Tele. Co., 279 F.Supp: 712 (W.D. Okla. 1967); Burton v. Juzwik, 524 P.2d 16 (Okla. 1974); State ex rel. Southwestern Bell Tele. Co. v. Brown, 519 P.2d 491 (Okla. 1974); Moore v. Metropolitan Utilities Co., 477 P.2d 692 (Okla. 1970); Mathies v. Kittrell, 354 P.2d 413 (Okla. 1960); Brown v. Higby, 191 Okla. 173, 127 P.2d 195 (1942); Sinclair Refining Co. v. Shaffer, 177 Okla. 610, 61 P.2d 571 (1936); Lilly v. St. Louis & S.F.Ry. Co., 31 Okla. 521, 122 P. 502 (1912). Punitive damages, under the law of Oklahoma, are incidental or collateral to a claim for actual damages and cannot alone provide the basis for a cause of action, see Alexander v. Jones, 29 F. Supp. 690 (E.D. Okla. 1939); Davidson v. First State Bank & Trust Co., 559 P.2d 1228 (Okla. 1977); Western Union Tele. Co. v. Garrett, 59 Okla. 50, 158 P. 619 (1916); Barnes v. McKinney, 589 P.2d 698 (Okla. App. 1978). It is the Court's opinion that under the test of St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 58 S.Ct. 586 (1938), it is a "legal certainty" that Plaintiff cannot recover the punitive damages claimed, at least as the action is presently pleaded.

The question now arises, what is the amount in controversy?

The Plaintiff's Petition is devoid of any allegations, and the Defendant's Petition for Removal simply asserts that the "matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs." As the removing party, the burden is upon Defendant to show that jurisdiction exists in this Court and that the action was properly removed, see, e.g., Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 42 S.Ct. 35 (1921); P. P. Farmers'

Elevator Co. v. Farmers Elevator Mutual Insurance Co., 395 F.2d 546 (Seventh Cir. 1968); Williams v. Tri-County Community Center, 323 F.Supp. 286 (S.D. Miss. 1971), aff'd, 452 F.2d 221 (Fifth Cir. 1971); Heymann v. Louisiana, 269 F. Supp. 36 (E.D. La. 1967). Where there is any substantial doubt concerning jurisdiction of the federal court on removal, the case should be remanded and jurisdiction should be retained only where it is clear. See Shamrock Oil & Gas Co. v. Sheets, 313 U.S. 100, 61 S.Ct. 868 (1941); Morrison v. Jack Richards Aircraft Co., 328 F.Supp. 580 (W.D. Okla. 1971); Williams v. Tri-County Community Center, supra; see also Jerro v. Home Lines, Inc., 377 F.Supp. 670 (S.D. N.Y. 1974). The provisions of the statutes authorizing removal, in that they represent congressionallyauthorized encroachments into state sovereignty, are to be strictly construed. Town of Freedom v. Muskogee Bridge Co., 466 F.Supp. 75 (W.D. Okla. 1978); Lee v. Volkswagen of America, Inc., 429 F.Supp. 5 (W.D. Okla. 1976).

Inasmuch as it is questionable whether the jurisdictional amount has been reached in this case, the Court has no alternative but to remand this action to the state court.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand be, and the same hereby is, sustained, and the Court remands this case to the District Court of Tulsa County, Oklahoma.

The Clerk of the Court is hereby directed to take the necessary action to remand this case without delay.

It is so Ordered this /478/day of September, 1981.

JAMES Ø. ELLISON UNITED STATES DISTRICT JUDGE

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDWARD L. SHARP,

Plaintiff,

vs.

No. 80-C-20-E

CREST ENGINEERING, INC., a subsidiary of COMBUSTION ENGINEERING, INC., a corporation,

Defendant.

EILED

SEP 1 4 1981

JUDGMENT

Jack . Silver, Clerk U. S. DISTRICT COURT

The Court, having this date filed its Findings of Fact and Conclusions of Law after non-jury trial of this case, holds that Defendant is entitled to judgment in its favor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment should be and the same hereby is entered in favor of Defendant Crest Engineering, Inc. and against Plaintiff, Edward L. Sharp, Defendant to recover its costs reasonably expended herein.

It is so Ordered this 1474 day of September, 1981.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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UNITED STATES OF AMERICA,

Plaintiff,

Vs.

HERBERT A. ROBERTS,

CIVIL ACTION NO. 80-C-568-E

Defendant.

#### DEFAULT JUDGMENT

This matter comes on for consideration this day of August, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Herbert A. Roberts, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Herbert A. Roberts, was personally served with Summons and Complaint on October 9, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Herbert A. Roberts, for the principal sum of \$1,340.00 (less the sum of \$350.00 which has been paid), plus the accrued interest of \$193.90 as of October 15, 1979, plus interest at 7% from October 15, 1979, until the date of Judgment, plus interest

at the legal rate on the principal sum of \$1,340.00 (less the sum of \$350.00) from the date of Judgment until paid.

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PAULA S. OGG

Assistant United States Attorney

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#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BETTE G. BRUHN,

Plaintiff,

vs.

No. 79-C-150-E

McDONNELL DOUGLAS CORPORATION, a Maryland corporation,

Defendant.

F 1 1 1 1 OEP 3 1981

#### AMENDED JUDGMENT

U.S. Markette

This action having been tried before the Court and a jury, the jury having rendered its verdict for the Plaintiff, and the Court having entered its Findings and Conclusions as to damages,

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Plaintiff and against Defendant in the amount of \$2,276.80, and that Plaintiff recover of Defendant her costs and attorney's fees in the sum of \$10,225.00.

Entered this 3ml day of September, 1981.

JAMES O. ELLISON UNITED STATES DISTRICT JUDGE

don Gudge James O. Elleron

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	; JQ
Plaintiff, )	Jack C. Silver, Glerk
vs.	<b>U. S.</b> DISTRICT COURT
KIMBERLY D. MOORE,	CIVIL ACTION NO. 81-C-298-C
Defendant. )	

#### DEFAULT JUDGMENT

This matter comes on for consideration this 2 day of August, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Kimberly D. Moore, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Kimberly D. Moore, was personally served with Summons and Complaint on July 8, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Kimberly D. Moore, for the principal sum of \$738.00 (less the sum of \$300.00 which has been paid) plus interest at the legal rate from the date of this Judgment until paid.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PAULA'S. OGG Assistant U. S. Attorne

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ERNEST E. CLULOW, Jr.,

Plaintiff,

- vs -

Case No. 78-C-234-C

UNITED STATES OF FUERICA ex rel VETERANS ADMINISTRATION,

Defendant.

14 1 - 1947 - 1947 -

ORDER

Jack C. Silver, clark U.S. DISTRICT COURT

The Court now considers the Amended Application of Plaintiff Ernest E. Clulow, Jr., for leave of Court to dismiss this action against the Defendant United States of America ex rel Veterans Administration. Plaintiff cites Title 38, U.S.C.A. \$ 351, as amended, previously unknown to Plaintiff, as apparently precluding Plaintiff from the effective recovery of damages in this case, even if Plaintiff obtained judgment herein for tort damages, because the said statute involves the apparent statutory right and authority of the Veterans Administration to set off in full future monthly payments of the Plaintiff's 100% war-time service-connected disability compensation against the total amount of any tort judgment under the Federal Tort Claims Act, Title 28, U.S.C.A. # 1346(b).

For the foregoing and other reasons it is hereby ORDERED that the Plaintiff's Application for Leave of Court to Dismiss this action be granted, and that the action against the Defendant United States of America ex rel Veterans Administration be and the same is hereby dismissed with prejudice to the right of the plaintiff to file the same again.

IT IS SO ORDERED this 2rd day of September, 1981.

Chief Judge, U.S. District Court

### IN THE UNITED STATES DISTRICT COURT FOR THE

#### NORTHERN DISTRICT OF OKLAHOMA

)

PROFESSIONAL INVESTORS CORPORATION, A Delaware corporation,

AUG 31 1981

Plaintiff,

Jack Johnson, Clerk U. S. DISTRICT COURT

Vs.

No. 81-C-80-E

VICTOR PALMIERI AND COMPANY,
INCORPORATED, a California
corporation, FINANCIAL INDUSTRIES CORPORATION, an Ohio
Corporation, CLIFT C. LANE,
and DOROTHY P. LANE, individually, HOWARD McDOUGALL,
ROBERT J. BAKER, THOMAS F.
O'MALLEY, LORAN W. ROBBINS,
EARL L. JENNINGS, JR.,
HAROLD J. YATES, MARION M.
WINSTEAD and R. V. PULLIAM, SR.,
IN THEIR CAPACITIES AS THE
TRUSTEES OF THE CENTRAL STATES,
SOUTHEAST AND SOUTHWEST AREAS
PENSION FUND, a Trust Fund,

Defendants.

# MOTION TO DISMISS DEFENDANTS FINANCIAL INDUSTRIES CORPORATION CLIFT C. LANE AND DOROTHY P. LANE

COMES NOW the plaintiff, Professional Investors Corporation, by its attorneys and moves the Court dismiss the above-entitled case with prejudice against defendants Financial Industries Corporation, Clift C. Lane and Dorothy P. Lane, individually. Plaintiff would inform the Court that the plaintiff and the defendants, Financial Industries Corporation, Clift C. Lane and Dorothy P. Lane, individually, have executed mutual releases, unsigned copies of which are attached hereto. Pursuant to these Mutual Releases the plaintiff agrees to dismiss the above-entitled case with prejudice against these defendants. Plaintiff has attempted to obtain the dismissal of these defendants by means of stipulation pursuant to Rule 41(a)(1), but has been unsuccessful in obtaining an agreement of all parties.

Plaintiff, therefore, moves to dismiss its Complaint against the defendants, Financial Industries Corporation, Clift C. Lane and Dorothy P. Lane, individually, in the above-styled case.

Respectfully submitted,

Paul Ferguson Ferguson & Litchfield 121 West Terrace 4545 Lincoln Blvd. Oklahoma City, OK 73105 (405) 525-6744

James H. Beauchamp P. O. Box 2888 Tulsa, OK 74101 (918) 587-8425

Dale McDaniel 2865 East Skelly Drive Tulsa, OK 74105 (918) 749-6640

George Verity 501 N. W. 13th Oklahoma City, OK 73105 (405) 235-5605

By Caul Ferguson Paul Ferguson

ATTORNEYS FOR PLAINTIFF

#### CERTIFICATE OF MAILING

I hereby certify that on this  $\frac{2}{2}$  day of  $\frac{2}{2}$ 

John Athens Keith Ellison 2400 First National Tower Tulsa, OK 74103

Jack Givens 201 West 5th, Suite 400 Tulsa, OK 74103.

Having reviewed the above Motion To Dismiss and the file of this case and having noted that no counterclaim has been filed by the Defendants, this Court orders the dismissal of this case in accordance with Rule 41(a)(2) of Federal Rules of Civil Procedure.

Dated this 3rd day of Leptember, 1981.

(Signed) H. Dale Cook for James Q. Lillison
District Judge for the Northern
District of Oklahoma

FILED

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#### MUTUAL GENERAL RELEASE

#### RECITALS:

Each party to this Mutual General Release intends that this instrument shall constitute a full, complete, and general mutual release of all claims, demands, damages, actions, and causes of action arising or existing as a result of any acts or omissions of the respective parties, their agents, servants, representatives, employees, officers or shareholders down to and including the date hereof.

Professional Investors Corporation ("PIC") and Alexander J. Stone ("Stone"), P. O. Box 2388, Tulsa, Oklahoma 74101, the officers, directors, agents and employees, successors and assigns of PIC and the heirs, representatives and estate of Stone are hereinafter referred to as "Stone Group", and Financial Industries Corporation ("FIC", 1900 Austin National Bank Tower, Austin, Texas 78701, its successors and assigns and its officers, employees, agents, representatives, directors and stockholders are hereinafter referred to as "FIC".

PIC has filed an action, now pending before the United States District Court for the Northern District of Oklahoma as Case No. 81-C-80-E, styled Professional Investors Corporation, a Delaware corporation, plaintiff, vs. Victor Palmieri and Company, Incorporated, a California corporation, ["Palmieri"] Financial Industries Corporation, an Ohio corporation, Clift C. Lane and Dorothy P. Lane, individually, Howard McDougall, Robert J. Baker, Thomas F. O'Malley, Loran W. Robbins, Earl L. Jennings, Jr., Harold J. Yates, Marion M. Winstead and

R. V. Pulliam, Sr., in their capacities as the trustees ["the Trustees"] of the Central States, Southeast and Southwest Areas Pension Fund, a trust fund, ["the Fund"] defendants ["Federal Litigation"].

NOW, THEREFORE, The Stone Group, jointly and severally, hereby release, remise and forever discharge FIC and its officers, directors, stockholders, employees, agents, representatives, subsidiaries, affiliated companies, parent companies, predecessors, successors and assigns, and each and all of them, and FIC hereby releases, remises and forever discharges each of the Stone Group, of and from any and all claims, demands, causes of action, and suits of every kind and nature which one party may now have or may have had at any time heretofore or may have at any time hereafter arising from or resulting from or in any manner incidental to any and every matter, thing or event, no matter what, occurring or failing to scour, at any time in the past up to and including the date hereof relating to any one or more of the Federal Litigation; 1,271,327 shares of United Founders Life Insurance Company; and any option or agreement with respect to such stock.

Notwithstanding anything that is herein stated or which may be implied to the contrary, PIC intends to pursue its claims for money damages against the Fund, the Trustees or Palmieri in the Federal Litigation. Therefore, PIC reserves all of its rights and claims for money damages against the Fund, the Trustees or Palmieri in the Federal Litigation. The provisions of this instrument are not intended to be a release of, nor are they a release of, any of PIC's claims for money damages against the

Fund, the Trustees or Palmieri, arising from the alleged wrongful actions of the Fund, the Trustees, or Palmieri, all as is more fully set forth in the Complaint in said Federal Litigation which is incorporated herein by reference.

The Stone Group will request the court in the Federal Litigation to dismiss FIC as a party in said action promptly hereafter.

This instrument is drafted in, and is to be construed by the laws of, the State of Oklahoma. Since this is a mutual release and settlement agreement, each party recognizes and agrees that the Doctrine of Contra Preferendum shall not apply but that in construing this instrument, any Court shall attempt to construe it in a manner which most nearly expresses the intent of the parties hereto.

This instrument has been carefully examined and studied by an authorized agent or attorney for each party. This instrument contains the entire agreement between the parties and all prior agreements, whether written, oral, or otherwise, are merged into this instrument. This agreement is executed solely for the consideration and mutual covenants expressed herein, without any other representation, promise, or agreement of any kind whatsoever.

Each releasing party, namely, the Stone Group and FIC, respectively vis-a-vis the other party, namely FIC and the Stone Group, respectively, expressly declare and agree that all claims, past, present or future are disputed and this Release will never be treated as evidence of liability, not as an admission of liability or responsibility at any time or in any manner whatsoever.

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. FINAMCIAL INDUSTRIES CORPORATION

Roy F. Mitte Its President

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#### MUTUAL GENERAL RELEASE

#### RECITALS:

Each party to this Mutual General Release intends that this instrument shall constitute a full, complete, and general mutual release of all claims, remands, damages, actions, and causes of action arising or existing as a result of any acts or omissions of the respective parties, their agents, servants, representatives, employees, officers or shareholders down to and including the date hereof.

Professional Investors Corporation ("PIC") and Alexander J. Stone ("Stone"), P. O. Box 2888, Tulsa, Oklahoma 74101, the officers, directors, agents and employees, successors and assigns of PIC and the heirs, representatives and estate of Stone are hereinafter referred to as "Stone Group", and Clift C. Lane and Dorothy P. Lane and the respective heirs, legal representatives, and estates of each, its successors and assigns and their employees, agents, representatives and servants are hereinafter referred to as "LANES".

United States District Court for the Northern District of Oklahoma as Case No. 81-C-80-E, styled Professional Investors Corporation, a Delaware corporation, plaintiff, vs. Victor Palmieri and Company, Incorporated, a California corporation, ["Palmieri"] Financial Industries Corporation, an Ohio corporation, Clift C. Lane and Dorothy P. Lane, individually, Howard McDougall, Robert J. Baker, Thomas F. O'Malley, Loran W. Pobbins, Earl L. Jennings, Jr., Harold J. Yates, Marion M. Winstead and

R. V. Pulliam, Sr., in their capacities as the trustees ["the Trustees"] of the Central States, Southeast and Southwest Areas Pension Fund, a trust fund, ["the Fund'] defendants ["Federal Litigation"].

NOW, THEREFORE, The Stone Group, jointly and severally, heraby release, remise and forever discharge the Lanes and the employees, agents, representatives, and servants of each of them, and each and all of them, and the Lanes hereby release, remise and forever discharge each of the Stone Group of and from any and all claims, demands, causes of action, and suits of every kind and nature which one party may now have or may have had at any time heretofore or may have at any time hereafter arising from or resulting from or in any manner incidental to any and every matter, thing or event, no matter what, occurring or failing to occur, at any time in the past up to and including the date hereof relating to any one or more of the Federal

Litigation, 1,271,527 shares of United Founders Life Insurance Company and any option or agreement with respect to such stock.

Notwithstanding anything that it herein stated or which may be implied to the contrary, PIC intends to pursue its claims for money damages against the Fund, the Trustees or Palmieri in the Federal Litigation. Therefore, PIC reserves all of its rights and claims for money damages against the Fund, the Trustees or Palmieri in the Federal Litigation. The provisions of this instrument are not intended to be a release of, nor are they a release of, any of PIC's claims for money damages against the

Fund, the Trustees or Palmieri, arrange from the alleged wrongful actions of the Fund, the Trusteen, and Edwiczi, all as is more fully set forth in the Complaint in the Federal Litigation which is incorporated herein by refer and.

The Stone Group will request the court in the Federal Litigation to dismiss the Lanes as a party in said action promptly hereafter.

This instrument is drafted in, and is to be construed by the laws of, the State of Oklahoma. Since this is a mutual release and settlement agreement, each party recognizes and agrees that the Doctrine of Contra Preferendam shall not apply but that in construing this instrument, any Court shall attempt to construe it in a manner which most nearly expresses the intent of the parties hereto.

by an authorized agent or attorney to each party. This instrument contains the entire agreement between the parties and all prior agreements, whether written, oral, or exhermise, are merged into this instrument. This agreement is expected solely for the consideration and mutual covenants expressed herein, without any other representation, promise, or agreement of any kind whatsoever.

Each releasing party, namely, the Stone Group and the Lane.. respectively vis-a-vis the other party, namely the Lanes and the Ston Group, respectively, expressly declare and agree that all claims, past, present or future are disputed and this Release will never be treated as evidence of liability, nor as an admission of liability or responsibility at any time or in any manner whatsoever.

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IN WITNESS WHEREOF, this partial general release and settlement agreement is executed on i and of each party by an officer duly authorized to execute page and to bind such party fully and completely.
Given under our hand and bears this the day of, 1981.
PROFESSIONAL INVESTORS CORPORATION  By  Alexander J. Stone  Its
Viewand : 1. Stone

Dorothy P. Line

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DILLARD CRAVENS, et al.,	)		
Plaintiffs,	)		
Vs.	)	No. 74-C-301-C	
AMERICAN AIRLINES, et al.,	)		FILED
Defendants.	)		SEP - 3 1981
	ORDER		Jack C. Silver Clark V. S. DESPRINT Christian

On April 16, 1981, the parties herein filed a Settlement Agreement (See Appendix) and a Stipulation re Approval of Settlement Agreement and Settlement Procedures. The parties indicated that they had approved of the Settlement Agreement and requested that the Settlement Agreement be tentatively approved by the Court, with a hearing scheduled prior to final approval by the Court. On April 23, 1981 the Court ordered that a hearing be held to determine whether the terms and conditions of the Settlement Agreement should be finally approved and a consent decree entered in accordance with the Settlement Agreement, and to hear and consider any objections to the Agreement. Individual notice to class members was given; and on June 12, 1981, a hearing was held on the settlement agreement and on objections thereto. Objections to the settlement agreement were presented by 17 mechanic class members who objected to the method of distribution to class members under the settlement agreement. These members contend that there was an agreement by the whole class made at several meetings to split equally the proceeds that were coming to the class. In addition, Billy J. Williams objected to his exclusion from the settlement and requested to be included. Mr. Williams protests paragraph (A)(3) of the Settlement Agreement which states that he was excluded because he has filed an individual discrimination suit against American

Airlines. He argues that he should be included in the class and in the agreement because his individual claim is separate and distinct from issues raised in the class action suit. William Kirk, Jr. also objected to the settlement and requested to be allowed to "opt out" of the action and Settlement Agreement herein. Mr. Kirk claims he is entitled to opt-out from the class action suit since, in his view, the proposed settlement does not protect his interests, and he desires to present his claim for back pay independently of the class action.

Following the hearing, the Court allowed affidavits to be filed by all parties. The Court has reviewed carefully the affidavits relating to the objections of the mechanics class members and finds that the objections are without merit.

The Court has also carefully examined the affidavits of Williams and Kirk, and their respective desires to "opt in" and "opt out". An order was entered by the Court on April 13, 1977 which conditionally certified plaintiffs' class under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. However, the privilege of being excluded from the judgment only exists in class actions brought under Rule 23(b)(3). Van Gemert v. Boeing Co., 259 F.Supp. 125 (S.D.N.Y. 1966). There is no opportunity for putative class members to "opt out" in a class action suit.

Rice v. City of Philadelphia, 66 F.R.D. 17 (E.D.Pa. 1974); EEOC v. Gen. Tel. Co. of Northwest, Inc., 599 F.2d 322, 334 (9th Cir. 1979); Wright & Miller, 7A, Federal Practice & Procedure \$\$1786.

Williams' request to opt-in to the settlement agreement is denied for the reasons stated in the Settlement Agreement.

In addition, the Court finds that the settlement agreement is fair, reasonable, represents the best interests of the class as a whole, and that the distribution of monies under the agreement is also fair and reasonable. Therefore the Settlement Agreement and Stipulation re Approval of Settlement Agreement and Settlement Procedures are hereby approved by the Court and all

parties to the action are hereby ordered to comply with its provisions. The objections of the 17 members of the mechanic class are hereby overruled. In addition, for the reasons stated above, the request of William M. Kirk to "opt-out" and the request of B. J. Williams to "opt-in" are hereby denied.

It is so Ordered this 2nd day of August, 1981.

H. DALE COOK

Chief Judge, U. S. District Court

UNITED	STATES	OF AMERICA,	)	:: - : <b>19</b> 81
		Plaintif	f, )	Jack C. Silver, werk
vs.			<u> </u>	U. S. D'STRICT COURT
ADUS J	. HURD,	JR.,	)	CIVIL ACTION NO. 80-C-238-C
		Defendan	t. )	

#### DEFAULT JUDGMENT

This matter comes on for consideration this 3 day of August, 1981, the Plaintiff appearing by Philard L.

Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Adus J. Hurd, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Adus J. Hurd, Jr., was personally served with Summons and Complaint on January 9, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Adus J. Hurd, Jr., for the principal sum of \$940.80 (less the sum of \$195.00 which has been paid) plus interest at the legal rate from the date of this Judgment until paid.

(Signed) 11. Data Cook
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING United States Attorney

PHILARD L. ROUNDS, JR.
Assistant U. S. Attorney

H. C. PRICE COMPANY,

Plaintiff,

vs.

THE FIRST NATIONAL BANK IN BARTLESVILLE, Trustee of the First Mortgage Bond Indenture-Washington County Industrial Development Trust Authority First Mortgage Revenue Bonds, 1975 Hesston Corporation Series, and WASHINGTON COUNTY INDUSTRIAL DEVELOPMENT TRUST AUTHORITY, a Public Trust,

Defendants,

and

HESSTON CORPORATION, a Kansas Corporation,

Intervenor.

No. 81-C-233-C

1981A

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER VACATING PRELIMINARY INJUNCTION, EXONERATING BOND, AND DISMISSING ACTION

Now on this 2rd day of <u>september</u>, 1981, the Court has for consideration the parties' Stipulation to Vacate Preliminary Injunction and Dismiss Action. The Court finds that the parties have stipulated that this Order may issue, and that it is appropriate.

IT IS THEREFORE ORDERED that the Preliminary Injunction issued by this Court on June 8, 1981, be and the same hereby is vacated, dissolved, set aside and held for naught.

IT IS FURTHER ORDERED that the plaintiff's \$1,000 Bond, which was posted in connection with the Temporary Restraining Order issued herein on May 21, 1981, and continued in effect by the terms of the Preliminary Injuction of June 8, 1981, be and the same hereby is exonerated and fully cancelled, discharged and released.

IT IS FURTHER ORDERED that this action be and the same hereby is dismissed, with prejudice to re-filing, each party to bear its own costs.

SO ORDERED.

Chief United States District Judge

	W A Action Section 1
UNITED STATES OF AMERICA,	\$6P 3 1081
Plaintiff,	
vs.	
HAZEL T. SEABOLT a/k/a HAZEL I. THULIN,	) ) CIVIL ACTION NO. 81-C-382-E
Defendant	<i>1</i>

#### DEFAULT JUDGMENT

This matter comes on for consideration this 3.1. day of August, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Hazel T. Seabolt a/k/a Hazel I. Thulin, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Hazel T. Seabolt a/k/a Hazel I. Thulin, was personally served with Summons and Complaint on July 27, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within, which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Hazel T. Seabolt a/k/a Hazel I. Thulin, for the principal sum of \$1,170.70 (less the sum of \$100.00 which has been paid) plus the accrued interest of \$430.71 as of October 15, 1980, plus interest at 7% from October 15, 1980, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,170.70 (less the sum of \$100.00) from the date of Judgment until paid.

(Signed, H. Lave DUNITED STATES DISTRICT JUDGE

for Judge Ellion

UNITED STATES OF AMERICA

FRANK KEATING United States Attorney

PHILARD L. ROUNDS, JR.
Assistant United States Attorney

		A TO SELECTION ASSESSMENT OF THE SELECTION ASSESSMENT OF T
UNITED	STATES OF AMERICA,	25P - 3 180i
	Plaintiff,	
vs.	·	
DONALD	E. ARMSTRONG,	CIVIL ACTION NO. 81-C-299-E
	Defendant.	

#### DEFAULT JUDGMENT

This matter comes on for consideration this 3rd day of August, 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Donald E. Armstrong, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Donald E. Armstrong, was personally served with Summons and Complaint on July 21, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Donald E. Armstrong, for the principal sum of \$820.13, plus the accrued interest of \$166.30 as of January 1, 1981, plus interest at 7% from January 1, 1981, until the date of Judgment,

plus interest at the legal rate on the principal sum of \$820.13 from the date of Judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE for Judge Eller

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PAULA S. OGG

Assistant United States Attorney

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RUTH EULA ROYSTON,	)	
Plaintiff,	Ì	
vs.	) ) No	. 81-C-210-E
SAFEWAY STORES, INC.,	)	
Defendant.	)	
		SEP - 3 1981
ORDE	R OF DISMISSAL	Jan Harris

The parties having so stipulated and agreed, IT IS ORDERED that this action be dismissed with prejudice, with Defendant to bear the costs of this action.

Given under my hand this 3rd day of Sept, 1981.

(Signed) H. Dale Cook

for \$ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,  Plaintiff,	デート (100 mm m
vs.	) )
CHARLES PHIPPS JR. and CAROLYN F. PHIPPS,	) ) CIVIL ACTION NO. 81-C-188-E
Defendants.	;

#### DEFAULT JUDGMENT

This matter comes on for consideration this day of <u>Sent</u>, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendants, Charles Phipps Jr. and Carolyn F. Phipps, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Charles Phipps Jr. and Carolyn F. Phipps, were personally served with Summons and Complaint on May 5, 1981, and that Defendants have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendants could have answered or otherwise moved as to the Complaint has expired, that the Defendants have not answered or otherwise moved and that the time for the Defendants to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff nave and recover Judgment against Defendants, Charles Phipps Jr. and Carolyn F. Phipps, for the sum of \$1,049.33, plus interest accruing thereon from March 10, 1980 at 9% per annum until paid.

(Signed) H. Dale Cook

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

COUNTS JR. PHILARD L. ROUNDS JR. Assistant U.S. Attorney

UNITED STATES DISTRICT JUDGE for Judge Ellison

### United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

Martha Taylor,

Cessna Aircraft,

CIVIL ACTION FILE NO. 78-C-159-B

Plaintiff,

vs.

ft, Defendant,

**UDGMENT** 

Teledyne Industries, Inc.,

Third Party Defendant,

jack C. Silver, Clerk U. S. DISTRICT COURT

108

This action came on for trial before the Court and a jury, Honorable Thomas R. Brett,

United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

It is Ordered and Adjudged that Judgment is entered in favor of Defendant, Cessna Aircraft and against the Plaintiff, Martha Taylor.

IT IS FURTHER ADJUDGED the Third Party Defendant, Teledyne Industries, Inc., is granted judgment on the third party claim of the defendant, Cessna Aircraft. Costs are to be assessed against the plaintiff.

Dated at Tulsa, Oklahoma

this 28th

day

of August

, 1981 .

Judge, x Chrokx nfx Chrox

Thomas R. Brett

ANTHONY A. PORTUESE, Plaintiff, v. No. 81-C-70-B CITIES SERVICE COMPANY, a Domesticated Oklahoma Corporation, WF - 2 1981 Defendant. Jack C. Silver, Clark

ORDER OF DISMISSAL

U. S. DISTRICT COURT

This cause having come before this Court on the Joint Application for Dismissal with Prejudice, and this Court being fully advised in the premises and the parties having stipulated, and the Court having found that the parties have reached a private settlement of the individual claims of Plaintiff and that such claims should be dismissed, it is, therefore,

ORDERED, ADJUDGED and DECREED that the Complaint of Plaintiff, and his causes of action set forth therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

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WILSON FIRE PROTECTION, INC.

Plaintiff

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THE ROAD SPRINKLER FITTERS LOCAL UNION NO. 669 U.A.,

Defendant

CIVIL ACTION NO. 81-C-238B 283

ORDER OF DISMISSAL WITHOUT PREJUDICE

Jack G. Silver, Carr U.S. DISTRICT COURT

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On this day, came on to be heard the above-entitled and numbered cause, and the Court having been advised by counsel for each party that Plaintiff is voluntarily moving for dismissal of its action, and the Court having noted that counsel for Defendant has no objection to said Motion, the Court is of the opinion that said Motion to Dismiss Without Prejudice should be granted pursuant to Rule 41(a), Federal Rules of Civil Procedure; it is therefore,

ORDERED, ADJUDGED and DECREED that the above-entitled and numbered cause be and the same is hereby dismissed as to Plaintiff and Defendant, without prejudice to the right of Plaintiff to refile the same action at a later date, and it is further,

ORDERED, ADJUDGED and DECREED that the parties incur their own costs of suit, for which let execution issue.

SIGNED AND ENTERED this / day of

Order of Dismissal Without Prejudice - Page 1

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UNITED STATES OF AMERICA,

Plaintiff,

Vs.

CHARLES W. SPARKS, SR.,

CIVIL ACTION NO. 81-C-248-B

DEFAULT JUDGMENT

Defendant.

This matter comes on for consideration this 30th day of August, 1981, the Plaintiff appearing by Philard L. Rounds, Jr., Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Charles W. Sparks, Sr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles W. Sparks, Sr., was personally served with Summons and Complaint on June 17, 1981, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Charles W. Sparks, Sr., for the principal sum of \$800.40 plus interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

FRANK KEATING United States Attorney

PHILARD L. ROUNDS, JR. Assistant U. S. Attorney

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UNITED STATES OF AMERICA, Plaintiff, vs. CIVIL NO. 81-C-349-B RICHARD JEFFERSON, Defendant.

AGREED JUDGMENT

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This matter comes on for consideration this aug., 1981, the Plaintiff appearing by Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Richard Jefferson, appearing pro se.

The Court being fully advised and having examined the file herein finds that Defendant, Richard Jefferson, was personally served with Summons and Complaint on July 16, 1981.

The parties agree and consent that judgment may be entered against the Defendant, Richard Jefferson, in the amount of \$2,350.00 (less the sum of \$150.00 which has been paid).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against Defendant, Richard Jefferson, for the principal sum of \$2,350.00 (less the sum of \$150.00 which has been paid), plus the accrued interest of \$633.89 as of January 25, 1981, plus interest at 7% per annum from January 25, 1981 until the date of Judgment, plus interest at the legal rate on the principal sum of \$2,350.00 from the date of Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING

United States Attorney

PAULA S. OGG Assistant U.S.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

LEE KEELING AND ASSOCIATES, INC.,
an Oklahoma corporation,

Plaintiff,

Vs.

Civil Action
No. 81-C-109-C

BUCKEYE PETROLEUM COMPANY, INC.,
a corporation,

Defendant.

#### STIPULATION OF DISMISSAL

COME NOW the plaintiff, Lee Keeling and Associates, Inc., and the defendant, Buckeye Petroleum Coompany, Inc., and stipulate to the dismissal without prejudice of the above entitled cause pursuant to Rule 41(a) of The Federal Rules of Civil Procedure.

Martha J. Rupp

SONBERG, WADDEL & BUZZARD

1100 Philtower Building Tulsa, Oklahoma 74103

(918) 583-5985

ATTORNEYS FOR PLAINTIFF

Richard H. Kelly

Vice-President and General Counsel for Buckeye Petroleum Company, Inc.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA SEP 1

Jack C. Silver, Clerk U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CIVIL ACTION NO. 80-C-587-B

FRANK L. THOMPSON,

Defendant.

### ORDER OF DISMISSAL

For good cause having been shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the case of the United States of America versus Frank L. Thompson is hereby dismissed for the reason that Frank L. Thompson has fully satisfied his debt owed to the United States of America.

Dated this

\_\_day of September, 1981.

THOMAS R. BRETT

United States District Judge